

IN THE UNITED STATES DISTRICT COURT
 EASTERN DISTRICT OF TENNESSEE
 AT CHATTANOOGA

UNITED STATES OF AMERICA,

Plaintiff,

v.

REJON TAYLOR,

Defendant.

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1:04-CR-160

Chattanooga, Tennessee
 September 8, 2008

BEFORE: THE HONORABLE CURTIS L. COLLIER,
 CHIEF UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

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JURY TRIAL
NINTH DAY OF TRIAL

APPEARANCES: (Continuing)

FOR THE DEFENDANT:

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1 (The proceedings were held outside the presence of
2 the jury, as follows:)

3 THE COURT: On Friday the Court had copies of the
4 draft charge provided to the parties. So let's take up the
5 draft charge. We'll start with the government. We'll give the
6 government a chance to object to any portions of the draft and
7 to make requests for additional instructions. We'll give the
8 defense a chance to respond to the government's comments. And
9 when the government is finished, we'll provide the same
10 opportunity to the defense.

11 Mr. Poole, I see you're standing?

12 MR. POOLE: Yes, sir. No objections to the charge.
13 We do have some requests, Your Honor.

14 Number 1, on Page 14, it's the proof of other
15 certain crimes or acts, the 404(b) instruction. And it does
16 lay out that "If you find the defendant did these acts, you
17 can consider the evidence only as it relates to the
18 government's claim on the defendant's motive or lack of
19 mistake." We would ask to add the other factors of intent and
20 consciousness of guilt in there as well. Those factors, the
21 404(b) evidence could demonstrate the defendant's intent and
22 consciousness of guilt as well as motive or lack of mistake.

23 THE COURT: Any objection?

24 MS. CORY: Well, Your Honor, we certainly prefer the
25 instructions as they are now; but if the government's asserting

1 that's what it introduced the evidence for, then I don't think
2 we have an objection.

3 THE COURT: Okay. Very well. On Page 14, then, we
4 will add those other two purposes as stated by the government.

5 MR. POOLE: Thank you, sir. Next is Page 38, which
6 is where the instruction talks about aiding and abetting.
7 Certainly we don't have any objection to that. Mr. Neff had
8 submitted a request for an instruction which we think would fit
9 in either right before or right after this, which is the
10 *Pinkerton* instruction on conspiracy theory. I know he laid out
11 the law with respect to that in the submission, but
12 basically -- I know the conspiracy is not charged in this case,
13 but I think that there is proof of a conspiracy, and I think
14 that's the test. If the facts demonstrate that a conspiracy
15 was there, then a *Pinkerton* conspiracy charge is appropriate.

16 As I said, I believe Mr. Neff submitted that a few
17 weeks ago with the appropriate law. But we would ask for
18 that. I think there is certainly proof that these three men
19 charged in this conspired together in this case to commit
20 these criminal acts. So I think the *Pinkerton* instruction
21 with regard to coconspirator liability is appropriate, Judge.

22 THE COURT: What was the conspiracy? Conspiracy to
23 do what?

24 MR. POOLE: I think there is a conspiracy to, if
25 nothing else, rob Mr. Luck.

1 THE COURT: But he's not -- this defendant is not
2 charged with robbery, though.

3 MR. POOLE: Well, carjacking, Your Honor, I would
4 relate to the robbery, robbery of not just the items, but they
5 also ended up robbing him of the van. I think it also became a
6 conspiracy to kidnap him, Judge. I think Mr. Matthews and
7 Mr. Taylor, the proof is, took him together. I don't think
8 there's any doubt that they agreed to do this, that they were
9 in this together. I would argue to you, Judge, based on
10 testimony last week of Mr. Matthews, this conspiracy is ongoing
11 in order to cover up the kidnapping and the carjacking. I
12 don't think the conspiracy has ever stopped, Judge; I think it
13 kept going until Mr. Matthews got on that stand and testified.

14 THE COURT: What is the evidence to support the idea
15 that there was a conspiracy to take the van?

16 MR. POOLE: Well, Judge, they went in together, they
17 came out at -- with guns on him, and took the van. So I think
18 that's pretty strong evidence that they agreed to do it.
19 Mr. Matthews rode in it, with Mr. Taylor driving it, from
20 Atlanta to Chattanooga; I think that's pretty clear. As I
21 said, I think that the conspiracy is ongoing to cover this up.
22 I think the proof is-- There is proof before the Court that--

23 THE COURT: Who is part of that conspiracy, the
24 ongoing conspiracy?

25 MR. POOLE: Sir Jack Matthews and Rejon Taylor.

1 THE COURT: So Mr. Marshall is not a part of that
2 conspiracy, then.

3 MR. POOLE: I believe he's withdrawn from that
4 conspiracy, that's correct, Your Honor.

5 THE COURT: Was he ever a part of that conspiracy?

6 MR. POOLE: Was he ever a party to?

7 THE COURT: The ongoing conspiracy.

8 MR. POOLE: To cover it up afterwards.

9 THE COURT: So we have two different conspiracies,
10 then.

11 MR. POOLE: Probably more than that, Judge. I think
12 he withdrew. There is proof before the Court that Mr. Matthews
13 and Mr. Taylor were in the cell together for Mr. Taylor -- that
14 Mr. Matthews had Mr. Taylor's possessions, Mr. Matthews lied
15 about being in the cell with Mr. Taylor. I think the Court can
16 easily conclude that there is a -- that they were together,
17 that they were conspiring for Mr. Matthews to come up and tell
18 that story. I think that's part of the original conspiracy
19 which Mr. Marshall withdrew from. So I don't think it's
20 actually multiple conspiracies; it's where one -- you had one
21 of the people withdraw, and two people stayed in it.

22 THE COURT: The essence of the conspiracy is the
23 agreement.

24 MR. POOLE: Sure.

25 THE COURT: Under your theory what happened was, at

1 the onset of the conspiracy the three conspirators, and perhaps
2 others, decided they would also cover up any crimes committed
3 during the course of the conspiracy.

4 MR. POOLE: Mr. Matthews testified he and Marshall
5 came up with that story, Judge. If that's not a conspiracy--
6 They sat there and they drank Hennessee and they smoked
7 marijuana and they came up with the story, and "This is the
8 plan, and this is what we'll tell anybody if we get caught."
9 That's exactly what he testified so. So I think there's proof
10 out there that's exactly what they do. Now, I obviously don't
11 believe that proof, but there is proof out there, and I think
12 Mr. Matthews has backed it up with what he's done with
13 Mr. Taylor. I don't think there is any doubt there is an --

14 THE COURT: Ms. Cory?

15 MS. CORY: Your Honor, there is absolutely no
16 evidence in the record of a conspiracy. And the *Pinkerton*
17 theory is just a huge stretch that would do nothing but confuse
18 the jury. The aiding and abetting instruction does everything
19 that the law requires to hold one codefendant responsible for
20 the acts of other codefendants in these activities. There is
21 no evidence of a conspiracy to kidnap, there is no evidence of
22 a conspiracy to carjack, and there is no evidence of a
23 continuing conspiracy. They were arrested. The crimes ceased
24 at the point of their arrest, if you want to include what
25 Marshall and Matthews did in conspiring or agreeing to try to

1 cover things up prior to their arrest. There is no evidence of
2 any continuing activity after the arrest. But what Mr. Poole
3 is trying to address as the conspiracy, isn't that just good
4 old aiding and abetting? And Your Honor has already given an
5 instruction for that.

6 THE COURT: Thank you.

7 The *Pinkerton* theory allows one conspirator to be
8 held responsible for the acts of other conspirators so long as
9 those acts were committed during the course of the conspiracy
10 and would have been reasonably foreseeable to the
11 conspirators. The essence of a conspiracy is the agreement
12 itself. And in this case the evidence of a conspiracy, as
13 articulated by Mr. Poole, are the acts themselves, not the
14 agreement, that is, that we don't have an agreement and then
15 we have certain acts that take place pursuant to that
16 agreement, that some of the conspirators may not even have
17 known of but would have been within the scope; the acts
18 themselves constitute the existence of the conspiracy. And
19 because we're dealing with the acts themselves, the
20 participants in those acts are personally responsible for
21 whatever they did.

22 So I don't think that the *Pinkerton* liability theory
23 is applicable in this case. There is no evidence of a
24 separate agreement between the parties, although there is
25 agreement of a conspiracy. But, as I said, the conspiracy

1 consists of the acts that constitute the conspiracy itself.
2 So the Court will deny the government's motion for a *Pinkerton*
3 liability instruction.

4 MR. POOLE: I understand that, Judge. I would point
5 out that Mr. Marshall testified that he had been following
6 Mr. Luck for some time and they did plan to rob him and they
7 talked about it a day before. Carjacking is just a robbery of
8 a car. So while I disagree, I understand the Court's ruling.

9 Next, on Page 40, flight and escape. I pointed this
10 out to your clerk, Judge. Number 1, October 6 should be
11 August 6—I'm sure that's been changed—at the top, August 6,
12 2003.

13 We would ask to add here, with regard to the flight
14 and escape, destruction of evidence. There is proof in the
15 record, Judge, that, Number 1, clothes were burned. We've got
16 the trash can actually put in as an exhibit where clothes were
17 burned because they had blood on them. The car—that was the
18 Impala—had blood in it, and it was stripped and seats torn
19 out of it. That was the condition it was found in. There was
20 proof from Mr. Marshall that he was told to cover the car, by
21 Mr. Taylor, and that he would come take care of it later. And
22 it was found in a condition where, you know, the seats had
23 been removed and there had been some destruction to the car.

24 Once again, if you believe Mr. Matthews, they
25 actually threw away a firearm which was involved in this,

1 which belonged to Mr. Luck, which is also, I guess,
2 destruction of evidence, evidence that, I guess, supports
3 their theory of self-defense, as well as the pictures they say
4 he destroyed.

5 But I think there is adequate proof for destruction
6 of evidence, certainly with regard to burning Sir Jack's
7 clothes and destroying the Impala. That could be added as
8 well. The jury could consider that—they certainly don't have
9 to—as proof of consciousness of guilt.

10 THE COURT: Any objection to that?

11 MS. CORY: Your Honor, we do object to that. The
12 flight/escape instruction pretty well encompasses activities
13 after the crime itself occurred. Everything that Mr. Poole
14 mentioned is in the record. I don't think we need anything
15 above and beyond what the flight/escape instruction
16 encompasses.

17 THE COURT: The Court does recall that there was
18 evidence of the concealment of evidence. So the Court will
19 give the instruction as requested by the government.

20 Do you have any particular language in mind?

21 MR. POOLE: Judge, Your Honor has given it,
22 destruction of evidence, before, in the Michael Johnson case.
23 We can get that language. But I think it says-- You have--
24 It says, "If the defendant took evasive action to avoid being
25 arrested, and was involved in attempting to escape from jail."

1 I think we can add "was involved in the destruction or
2 concealment of evidence" to that. That would cover it.

3 THE COURT: Very well. We'll add that, then.
4 Anything else?

5 MR. POOLE: No, thank you, sir.

6 THE COURT: Okay. Ms. Cory?

7 MS. CORY: Your Honor, although by and large we found
8 the jury instructions very acceptable to us, there were
9 numerous comments that we had and a couple of additions to the
10 instructions. In order to avoid confusion, I have made copies
11 of the pages in which our changes are made, and I'd like to
12 give a copy to the government and the Court, just to follow as
13 I'm going --

14 THE COURT: Very well.

15 MR. POOLE: Thank you.

16 (Brief pause.)

17 MS. CORY: Your Honor, on Page 5 of your
18 instructions, the very first line we would like amended to
19 read, "A defendant is not obligated to produce any evidence,
20 either by cross-examining the witnesses who are called to
21 testify by the prosecution or by testifying on his own behalf."
22 And we ask that simply because saying "A defendant is not even
23 obliged to testify," I think, lends itself to the jury's
24 inferring that the defendant should have testified. And our
25 amended change does the same thing without -- it serves the

1 same purpose without having that implication.

2 THE COURT: Any objection?

3 MR. POOLE: No, sir.

4 THE COURT: Okay. We will make that change.

5 MS. CORY: Thank you, Your Honor. There are also
6 several places where I made changes to what I thought were
7 grammatical or typographical errors. I'm not going to go
8 through those.

9 THE COURT: I see on Page 5 you have or crossed out
10 and the word are, A-R-E, put in.

11 MS. CORY: Yes, Your Honor. That's the kind of
12 thing, "Possible doubts are doubts based purely --"

13 THE COURT: No, I think that's --

14 MS. CORY: Oh, okay. You're right. Sorry about
15 that.

16 On Page 11, second paragraph, "The fact that Joey
17 Marshall and Sir Jack Matthews have confessed," the evidence
18 at trial really was that they had pleaded guilty to a crime.
19 In the end, neither of them confessed to it. So we would ask
20 that be changed to pleaded guilty.

21 MR. POOLE: I object to that, Your Honor.

22 THE COURT: And why is it that you think they have
23 not confessed?

24 MS. CORY: Well, Mr. Marshall's testimony was, he
25 didn't know what was going on, he didn't even know that there

1 was anybody in the van that he was following. So he obviously
2 was not confessing to participating in either a carjacking or a
3 kidnapping because he didn't know Guy Luck was in the van. At
4 the most, he was agreeing that he was following a van that
5 Rejon Taylor may have stolen.

6 As far as Sir Jack Matthews goes, his whole
7 explanation was that he was participating in the distribution
8 of marijuana with Guy Luck and Mr. Marshall and Mr. Taylor.
9 So he didn't confess to any crime other than the distribution
10 of marijuana.

11 THE COURT: Well, they stood up before me, under
12 oath, and in answer to the question "Are you pleading guilty
13 because you are in fact guilty?" they both swore under oath
14 that they were in fact guilty. Why is that not a confession?

15 MS. CORY: It was a confession during those
16 proceedings, but what the jury heard was not a confession. And
17 the evidence that entered in of their prior pleas of guilty
18 does not enter in as substantive evidence. So what the jury
19 has before them is people who pleaded guilty, not people who
20 confessed under oath during this trial.

21 THE COURT: Mr. Poole?

22 MR. POOLE: Number 1, I don't know why their pleas of
23 guilty don't come in as substantive evidence. I don't think
24 there is any support for that.

25 Number 2, there is plenty of proof from Mr. Matthews

1 and Mr. Marshall. They gave plenty of evidence.

2 Mr. Matthews, Special Agent Melia talked to him at least ten
3 times, and he confessed to these crimes. Granted, he no
4 longer claims that's the story. But he's confessed at least
5 ten times. And Mr. Marshall also said from the stand he's
6 confessed numerous times. He confessed. He confessed on the
7 stand, I would argue because he's part of the conspiracy, but
8 certainly because he's part of these actions, and he explained
9 why he was guilty as being part of these. I don't think there
10 is any doubt that both these defendants confessed on numerous
11 occasions, Judge.

12 THE COURT: The Court will deny that request, then.

13 MS. CORY: Your Honor, following Page 12, I did find
14 that the defense had requested an instruction on inconsistent
15 statements. Unfortunately in my requests I had termed it
16 "inconsistent testimony," and submitted two instructions on
17 that. However, we did ask for an instruction on witness
18 credibility and inconsistent statements. A great deal of the
19 proof in this case involved inconsistent statements, and
20 therefore I would ask the Court to instruct the jury as I've
21 provided here on this additional page, with this term,
22 Requested Instruction Number 11 in my original requests, to
23 provide an instruction regarding inconsistent statements.

24 Then also we would ask for the addition of an
25 instruction in the same vein, and right after that one,

1 "Evidence Admitted for a Purpose Other Than to Establish the
2 Truth of the Matter Asserted." And it would read similarly,
3 "During the trial you heard testimony from Lieutenant
4 Coppinger regarding an envelope and its contents. The
5 contents of the envelope are not to be considered by you as
6 affirmative evidence bearing on the defendant's guilt or
7 innocence, because this envelope was placed before you for the
8 limited purpose of helping you decide what significance the
9 envelope had on your determination of Sir Matthews'
10 testimony" -- or, rather, that should be "Sir Matthews'
11 credibility."

12 THE COURT: Mr. Poole, is there any objection to the
13 first request, that is, inconsistent -- prior inconsistent
14 statements?

15 MR. POOLE: No. No, I don't think so, Judge.

16 THE COURT: Okay. The Court, then, will give that.

17 Now, the second one, I think this addresses the
18 matter that we brought up on Friday, that we had a chance to
19 discuss some, and the parties have submitted briefs on it.

20 MS. CORY: As I said, Your Honor, that's --

21 THE COURT: Mr. Poole?

22 MR. POOLE: Judge, we actually filed a very brief
23 response. I don't think there is any basis in the law for
24 doing what they're asking. That being said, just to protect
25 the record, we don't object to a charge stating that the

1 contents of the envelope in question are not to be considered
2 for the truth of the matter asserted. If the Court is willing
3 to give that, we don't object to it. We don't intend to argue
4 those facts, Judge, out of those 302s.

5 THE COURT: I don't have a problem with giving that,
6 but if I give that I think I need to reconsider the Defendant's
7 Rule 29 motion, then. The Court's Rule 29 decision was based
8 in part upon there being some substantive evidence as to what
9 took place in the van. And without those statements I don't
10 know that there is any substantive evidence at all in the
11 record as to what took place in the van.

12 MR. POOLE: I believe there is, Judge. I believe the
13 plea agreements are still in, with the facts that they both --
14 Mr. Marshall and Mr. Matthews swore to, and they're substantive
15 evidence as to what took place in the van.

16 MS. CORY: Your Honor, I agree with you. I would
17 simply say, if you add this instruction, that while the jury is
18 considering their decision, Your Honor can reconsider the
19 Rule 29 motion.

20 MR. POOLE: Certainly, Your Honor, if Your Honor does
21 not want to consider the plea agreements, I think the plea
22 agreements are in, the factual bases are in, and the same facts
23 are in through those as the 302s. But even if Your Honor wants
24 to reconsider the Rule 29, we would not agree to the limiting
25 instruction. We believe that testimony and that proof is

1 already in, Your Honor, through both Sir Jack Matthews' and
2 Joey Marshall's pleas.

3 MS. CORY: Your Honor, we did object vigorously to
4 Lieutenant Coppinger's being admitted to testify as to either
5 the envelope or the contents. I think we preserved that
6 objection.

7 MR. POOLE: They didn't object to the contents, Your
8 Honor. They put them in.

9 MS. CORY: Well, the only reason we put the contents
10 in, Your Honor, was because we felt that there was an unfair
11 representation or inference being made by the envelope's being
12 submitted. We had to rebut that. That's why we submitted the
13 contents, to show the jury that there was no evidence of a
14 conspiracy or collusion between Mr. Taylor and Mr. Matthews.

15 THE COURT: Well, I think that was a sound tactical
16 decision based upon what was before the defense at the time,
17 and I think that any number of attorneys faced with the same
18 facts would have made the same decision. And I agree with the
19 defense that the evidence is offered to rebut an inference.
20 But just as most of the defense evidence and cross-examination
21 was intended to rebut either other evidence or inferences,
22 rebuttal evidence is not impeachment evidence. Impeachment
23 evidence is a very special type of evidence. And if the
24 parties decide to admit inadmissible evidence, then that is
25 fine, the parties can do that, they have the right and the

1 power to do that. And once the evidence comes in, it can be
2 used for any purpose, even if it was presented for some other
3 purpose, unless the law has some limitations on it.

4 The Court recalls that during the testimony of
5 Mr. Matthews he talked about certain statements that Mr. Luck
6 made. Those were hearsay statements that were being offered.
7 There was no objection to those statements. Those statements
8 came in, and the jury is free to consider them for any purpose
9 at all. And the Court sees the contents of the envelope as
10 the same thing.

11 It was very logical and reasonable for the defense
12 to want to show to the jury that what was in the envelope was
13 not a direction by the defendant for the witness to testify on
14 the stand the way he testified on the stand. That was
15 appropriate, logical, and reasonable under the circumstances.
16 But once the evidence came in without objection, the evidence
17 was in. So the Court will not give the second request, then,
18 "Evidence Admitted for a Purpose Other Than to Establish the
19 Truth of the Matter Asserted."

20 MS. CORY: Your Honor, on Page 14, second line, we
21 would ask, in addition, "If you find beyond a reasonable doubt
22 the defendant did those acts," in regard to the 404(b)
23 evidence.

24 MR. POOLE: Judge, we don't think that's an accurate
25 statement of the law, though, looking at it right now.

1 Obviously we're not trying to prove him guilty beyond a
2 reasonable doubt on those charges. Mr. Neff is frantically
3 looking for the 404(b), but we have -- I don't think that's
4 accurate. I think "If you find the defendant did those acts"
5 is sufficient.

6 MS. CORY: Your Honor, I would agree that for the
7 Court to have admitted the 404(b) evidence the Court need not
8 have decided it beyond a reasonable doubt. But for the jury to
9 consider it, it's like any element of the offense, it has to
10 go -- it has to measure up to the proof beyond a reasonable
11 doubt standard.

12 MR. POOLE: Judge, it's not an element of the
13 offense. So I guess it is --

14 THE COURT: Let me take a look at that. I don't know
15 that I've ever faced this before. I know that the law is that
16 the jury must determine that the acts took place.

17 MR. POOLE: Yes, sir.

18 (Brief pause.)

19 THE COURT: Well, I do have some law on it. It is
20 the United States Supreme Court, the *Huddleston* case,
21 *Huddleston v. United States*: "Thus, the judge need only find
22 that the jury could reasonably conclude by a preponderance of
23 the evidence that the defendant committed or is responsible for
24 the other crimes, wrongs, or acts."

25 And there is another Supreme Court case, *Dowling v.*

1 *United States*, that indicates that you can submit to the jury
2 evidence upon which a defendant had previously been acquitted,
3 which means that a prior jury had determined that the evidence
4 did not meet the proof beyond a reasonable doubt standard. So
5 that would have to mean, then, that the second jury would be
6 making its decision upon a lesser standard.

7 I'll still take a look at this, though, and see.
8 And if there is support for the issue, the Court will give the
9 instruction.

10 MS. CORY: Thank you, Your Honor.

11 On Page 21, which is the "Carjacking Resulting in
12 Death," the first element, we would ask that it be -- that the
13 phrase be added "defendant took and caused to be taken a motor
14 vehicle from the person or presence of another."

15 The way it's worded here, that would apply to a car
16 theft as well as a carjacking. And this is-- A carjacking
17 is, in essence, a robbery; it has to be from the person and
18 presence of another.

19 MR. POOLE: I think the second element differentiates
20 between a carjacking and car theft, Your Honor.

21 MS. CORY: Your Honor, I think it's critical that
22 they understand that this is from the person or presence of
23 another. That is an element. I think that's the way the
24 element reads in many jury instructions.

25 THE COURT: Okay. We will add that, then.

1 MS. CORY: Thank you. And that same addition, then,
2 on what's my Page 22 of your instructions, the top sentence,
3 "from the person or presence of another."

4 Then the third element, Your Honor—and this is just
5 to avoid confusion—we ask that the very last sentence be
6 changed to state, "The parties have stipulated or agreed that
7 the van was made in the state of Ohio." Leaving it "They've
8 agreed that this has occurred" is just vague enough so
9 somebody on the jury could think that we were admitting to the
10 carjacking and not just to the previous sentence that the car
11 was made in the state of Ohio.

12 THE COURT: Is that what the stipulation says? What
13 does the stipulation say?

14 MR. POOLE: I'll have to find it, Judge.

15 (Brief pause.)

16 MR. POOLE: The stipulation was that the van was
17 previously transported, shipped, and received in interstate
18 commerce.

19 (Brief pause.)

20 MR. POOLE: Actually doesn't mention Ohio.

21 MS. CORY: Your Honor, he's correct.

22 THE COURT: I'd like the instruction to conform to
23 what's in the stipulation, then.

24 MR. POOLE: Would Your Honor like a copy --

25 THE COURT: Ms. Cory, I can change it to conform to

1 what's in the stipulation, or we can keep it as it is.

2 MS. CORY: Your Honor, I would prefer that it conform
3 to the stipulation, because I think even that avoids any
4 inference that we're agreeing to more than the fact that this
5 particular van had crossed state lines at some point.

6 THE COURT: Very well.

7 MS. CORY: On Page 23-- And this goes to both of
8 the-- I think I used this same matter in a couple of the other
9 counts. But we'll get there. We would ask for the addition--
10 Your Honor goes through a little description of each of the
11 elements of the offense, but then there is no recapitulation of
12 the fifth element. And we would ask, in order not to leave the
13 jury with the thought that there is less than all five elements
14 that must be proved, that the Court simply add, "The
15 fifth element requires that in committing the carjacking the
16 defendant did in fact cause the death of Guy Luck." And, here
17 again, that's simply to avoid any confusion on the jury's part
18 about the necessity of finding each element.

19 THE COURT: Mr. Poole?

20 MR. POOLE: I don't object to that, Judge.

21 THE COURT: Okay. We will do that, then.

22 MS. CORY: On Page 24, Charge 2, I think that in
23 trying to make the initial description of the murder with a
24 firearm explanatory toward all of the also lesser-includeds,
25 the Court has diluted the fact that what's charged is murder

1 with a firearm. We would ask, on that first paragraph, that
2 the second sentence, "Count 2 of the indictment charges the
3 defendant with violating federal law by using, carrying, and
4 discharging a firearm during and in relation to a crime of
5 violence," that that sentence be omitted—the sentence before
6 it is a more accurate and precise explanation—and also that
7 each place here where it says "causes the death of," it say
8 "murder" or "committed first-degree murder," because the other
9 two lesser-includes deal with something other than murder.
10 The first decision the jury is making is murder, whether there
11 was a murder.

12 THE COURT: Mr. Poole?

13 MR. POOLE: I think as it's written it's an accurate
14 statement of the law, Your Honor, or the charge. I think the
15 charge does mention using, carrying, and discharging a firearm.
16 So I don't think there is any problem with it as written.

17 MS. CORY: If Your Honor is going to leave that
18 sentence in, then we would ask at least that it be moved to be
19 the first sentence, because it is the least descriptive of what
20 this count charges, and make the second sentence "Count 2 of
21 the indictment charges the defendant with murder by use of a
22 firearm during and in relation to a carjacking."

23 And definitely the fourth element has to be he
24 committed first-degree murder; it is not that he simply caused
25 the death of Guy Luck.

1 THE COURT: Well, these first two sentences are not
2 written correctly. Let's see if we can straighten this out.
3 "Count 2 of the indictment charges defendant with murder by use
4 of a firearm during and in relation to carjacking. Federal law
5 prohibits the use, carry, and discharge of a firearm during and
6 in relation to a crime of violence."

7 MS. CORY: That's fine, Your Honor.

8 THE COURT: Mr. Poole?

9 MR. POOLE: Yes, sir.

10 THE COURT: Okay. "Federal law prohibits the use,
11 carry, and discharge of a firearm. A person is guilty of this
12 offense if he, in the course of committing a crime of
13 violence --" and, Mr. Poole, do you object to taking out the
14 words "causes the death of" and substituting the word murders?

15 MR. POOLE: Judge, I believe that the indictment says
16 "caused the death of," which is why I think it's appropriate.

17 THE COURT: And did the indictment track the statute?

18 MR. POOLE: Yes, sir.

19 MS. CORY: Your Honor, I believe if you look at all--
20 I don't have the indictment right in front of me. I need to go
21 get it. But I think if you track everything that that count
22 says, it establishes murder, because it deals with he did it
23 knowingly and with premeditation or in the course of kidnapping
24 and he did it with malice aforethought. All of those, which
25 Your Honor explains later in this charge, go to murder, and not

1 to the lesser-includeds of voluntary manslaughter or
2 second-degree murder.

3 MR. POOLE: I think the Court explains it under the
4 fourth element, which is appropriate.

5 MS. CORY: And, Your Honor, we think the
6 fourth element should be "committed first-degree murder,"
7 because that's what's charged in the indictment, then the
8 lesser-includeds would be the second-degree murder, which Your
9 Honor deals with later, or voluntary manslaughter.

10 THE COURT: In fact, other than in the titles, I
11 don't see the word murder in the first two counts at all.

12 MS. CORY: Well, Your Honor --

13 THE COURT: I do see "murder" in Count 4.

14 MR. POOLE: It is Count 3, Judge.

15 THE COURT: And it is in Count 2. So it's not in
16 Counts 1 and 3.

17 MR. POOLE: That's correct.

18 MS. CORY: That's correct. And we're not asking for
19 it in 1 and 3. But Count 2 specifically says "caused the death
20 of Guy Luck through the use of a firearm, which killing is a
21 murder as defined in 18, United States Code, Section 1111, in
22 that the defendants, with malice aforethought and in the
23 perpetration of kidnapping, did unlawfully kill Guy Luck by
24 shooting him multiple times with a firearm, willfully,
25 deliberately, maliciously, and with premeditation."

1 What they've charged is murder. Your Honor explains
2 all of those elements in detail later. But to say that
3 premeditation and malice aforethought are encompassed by
4 "caused the death of Guy Luck," it doesn't give the jury
5 anything appropriate to go by.

6 THE COURT: Mr. Poole?

7 MR. POOLE: Judge, I think Your Honor does lay out
8 what caused the death of means. If Ms. Cory would like "which
9 caused the death of Guy Luck," comma, "which killing is a
10 murder," I don't object to that. I mean --

11 MS. CORY: Your Honor, "caused the death of Guy Luck"
12 is an element in the murder, in the second-degree murder, and
13 in the voluntary manslaughter charges. That covers all three
14 of those. The thing that makes this distinct is that he's
15 charged with first-degree murder.

16 THE COURT: The Court will grant the request with
17 regard to changing "caused the death of" in this first
18 paragraph to murder. So the Court will make that change.

19 Now, in the elements you'd like the word knowingly
20 put before the --

21 MS. CORY: Your Honor, that's just an element of the
22 offense.

23 THE COURT: Any objection?

24 MR. POOLE: Where are we, Judge? I'm sorry.

25 MS. CORY: Second count. Excuse me. Second element.

1 MR. POOLE: That's fine, Judge.

2 THE COURT: Okay. We will do that. And then in the
3 fourth count, something similar, you'd like the words "caused
4 the death of" taken out and "committed first-degree murder" --

5 MS. CORY: Yes, Your Honor.

6 THE COURT: Mr. Poole?

7 MR. POOLE: "Defendant murdered Guy Luck through the
8 use of a firearm." That's fine, Judge.

9 THE COURT: What, now, Mr. Poole?

10 MR. POOLE: If she wants-- I thought that kind of
11 tracked what we were just talking about. "Murdered Guy Luck
12 through the use of a firearm" is fine.

13 THE COURT: "Fourth, in committing the offense,
14 defendant murdered Guy Luck through the use of a firearm"?

15 MR. POOLE: Yes, sir.

16 MS. CORY: Your Honor, we prefer the murder. We
17 prefer, above all, murder in the first degree, since that's
18 what the first count -- or the second count charges.

19 THE COURT: The Court will change the language, then,
20 to "fourth, in committing the offense, defendant murdered Guy
21 Luck through the use of a firearm."

22 MR. POOLE: Thank you.

23 THE COURT: What's next?

24 MS. CORY: Your Honor, on Page 32, you give the
25 "Kidnapping Resulting in Death" instructions. We would ask

1 that you insert definitions of knowingly and willfully for the
2 jury. And I have just submitted as an additional page where
3 we, in our requested jury instructions, gave definitions of
4 those terms.

5 THE COURT: Any objection?

6 MR. POOLE: No, sir.

7 THE COURT: Okay. We will do that, then.

8 MS. CORY: And on Page 33, the same thing we did in
9 the earlier definition -- or explanation of the elements, to
10 add, after the third element, that the fourth element requires
11 that in committing the kidnapping the defendant did cause the
12 death of Guy Luck.

13 MR. POOLE: No objection.

14 MS. CORY: Then on the next page, Page 34, "Murder
15 With a Firearm," the same changes we just discussed, where Your
16 Honor revised the second sentence and changed to murder and
17 knowingly.

18 MR. POOLE: I think you should track Count 2. So I
19 have no objection, Judge.

20 MS. CORY: And that's what we're requesting.

21 THE COURT: Okay. Any other suggestions or
22 objections?

23 MS. CORY: I'm getting there, Your Honor. No, Your
24 Honor. Those are all our comments.

25 THE COURT: Thank you.

1 I think, then, I've also addressed the issue that we
2 discussed on Friday regarding the contents of the envelope.
3 And, let's see, there was another-- Let's see. There was a
4 motion or brief filed regarding statements made by Mr. Luck?

5 MS. CORY: Your Honor, that's right.

6 THE COURT: Is that right?

7 MS. CORY: Your Honor, there was a motion filed
8 regarding whether Mr. Luck's statement was admissible as a
9 dying declaration. And the government made a lengthy rebuttal
10 of that argument.

11 THE COURT: Is that something the Court needs to take
12 up now?

13 MR. POOLE: Yes, sir.

14 MS. CORY: I think so.

15 THE COURT: Who wants to argue it, then?

16 MS. CORY: Your Honor, I think the issue was very
17 well briefed by both parties. It was simply that in the light
18 of the evidence we received from Dr. Maxwell and Dr. King, it
19 appeared that death was not imminent, and we thought there was
20 a good argument that it was not a dying declaration.

21 THE COURT: Mr. Poole?

22 MR. POOLE: Actually Mr. Neff will have this, Judge.

23 MR. NEFF: Your Honor, as I said in my response, this
24 was a classic dying declaration. The victim stumbled out of
25 the van, spurting blood as a result of a shot to his mouth. He

1 indicated that he had been -- they had robbed him and shot him,
2 and he repeated over and over that he thought he was going to
3 die. He in fact did die. He lost consciousness shortly after
4 that. The fact that heroic measures by the emergency room were
5 taken to keep him alive is immaterial. The doctor testified
6 that the victim was essentially brain-dead when he got to the
7 hospital, and never regained consciousness. So it's clearly a
8 dying declaration, Judge. He believed he was going to die.
9 His death was imminent. And he did in fact die. Even if it's
10 not a dying declaration, it's certainly an excited utterance,
11 Judge, and I outlined that as well. And I would point out that
12 our view is that the defense is attempting to turn back the
13 hands of time on the trial again and unadmit previously
14 admitted testimony, and our view is that they have forfeited
15 that or defaulted on that opportunity by not objecting in the
16 first place.

17 (Brief pause.)

18 THE COURT: The rule on this motion is rule 804(b)(2)
19 of the Federal Rules of Evidence, which permits the
20 introduction of statements made by a victim in a homicide case
21 where the victim believes that death is imminent. From the
22 evidence available in this case, introduced, the Court
23 concludes that the requirements of this rule have been
24 satisfied. Therefore the Court denies the defendant's motion
25 to strike the testimony of the witnesses Charlie Pac and Jason

1 Reeves.

2 Is there anything further that the Court must do?

3 Okay. We asked the jury to come back at 9:30. We still have
4 a few minutes.

5 Mr. Poole?

6 MR. POOLE: I was going to say no, sir.

7 THE COURT: Okay. We'll be in recess, then, until
8 the jury arrives.

9 (Brief recess.)

10 (The jury entered the courtroom, and the proceedings
11 continued as follows:)

12 THE COURT: Please be seated.

13 Mr. Neff, is the government ready to proceed?

14 MR. NEFF: We are, Your Honor.

15 THE COURT: You may.

16 MR. NEFF: Ladies and gentlemen, about two weeks ago
17 I talked to you about the fact that we were getting ready to
18 travel down the road of this case together and, while there
19 might be a couple of detours, that we would inevitably end up
20 in the same place, and that is, arriving at the defendant's
21 guilt. And there is no need to ask if we're there yet, ladies
22 and gentlemen, because we are.

23 Notwithstanding the fairy tale world testimony --
24 fairy tale world of Sir Jack Land which we made a brief detour
25 to, the bizarre science-fiction world in which there's

1 magically appearing and disappearing guns and marijuana and
2 photos of naked Asian boys and homosexual sex -- in fact, the
3 story is so ridiculous, if you were to believe Mr. Matthews,
4 the only thing he and the defendant are guilty of is
5 littering. But that's not really what we have here, ladies
6 and gentlemen. The proof of the defendant's guilt, from all
7 the credible evidence in this case, I would submit to you, is
8 overwhelming. And the fictional testimony of Mr. Matthews
9 does not match either the evidence in the case or common
10 sense, despite his best efforts to study, to collaborate with
11 the defendant in his cell—which, by the way, he had a very
12 difficult time admitting that he'd been in the same cell with
13 the defendant for a period of time—and try to make it so.

14 Mr. Matthews, Mr. Marshall, and the defendant
15 conspired to carjack and kidnap the victim, Mr. Luck, five
16 years ago, on August 6th of 2003. And Mr. Matthews and the
17 defendant continued to conspire to attack the victim even as
18 late as September 3rd, 2008, when Mr. Matthews came in and
19 gave his outlandish testimony. But lies can't be reconciled
20 with the truth, ladies and gentlemen. And what I want to do
21 with you is cover the credible proof from the trial and show
22 that we've proven the elements of the defendant's crimes
23 beyond any reasonable doubt.

24 Now, you're going to get some instruction from the
25 Court. I think probably the two most important words in any

1 trial for a criminal jury to hear are the words right here,
2 "common sense." Ladies and gentlemen, we ask you to apply
3 your common sense to your consideration of the evidence in
4 this case. And really, even though this case is obviously of
5 great magnitude and very important, it's also quite simple. I
6 mean, we know certain things without any contest. We know
7 that the victim lived in Georgia and he ended up in Tennessee.
8 We know that he owned the van that ended up crossing from
9 Georgia to Tennessee. We know who was in the van. We know
10 the three people that were in the van, because we've got one
11 man's body, we've got another man's blood along with the dead
12 victim's body, and we've got the defendant's palm print in the
13 victim's blood inside the van. So we know who the players
14 were inside the van.

15 We also know what each of the players did inside the
16 van. We know, for example, that Mr. Matthews had the 9mm
17 pistol. We know that he shot the victim once with that pistol
18 in the arm. We know that the defendant then came into the
19 picture and turned around and shot the victim, and the bullet
20 that went through the victim entered into Mr. Matthews, the
21 side of his back. He didn't shoot himself with a .38 caliber
22 pistol, ladies and gentlemen. Mr. Taylor ended up shooting
23 him. We know that that same pistol in which a round ended up
24 in Mr. Matthews also was the pistol that was used to shoot the
25 victim in the mouth and kill him. So, ladies and gentlemen,

1 that's really what this case is about. We know the victim
2 ended up dead in the state of Tennessee.

3 Now, the Court's going to instruct you on what the
4 elements of each of the charges are going to be, and I'm going
5 to cover that here with you just for a minute and talk about
6 the proof in light of these. "Carjacking resulting in death"
7 is the first one, and you can see the elements right here:
8 "The defendant took and caused to be taken a motor vehicle"
9 from another person.

10 Now, Ms. Belcher, the defendant's fiancée, testified
11 that van belonged to him. The registration came back to
12 Mr. Luck. There is no question that that van belonged to
13 Mr. Luck. We know that the defendant ended up driving that
14 van and drove it for two hours, not the victim. We know the
15 victim ended up in the back of that van, being held at
16 gunpoint. We've obviously got the fact that the van ended up
17 here in the state of Tennessee ultimately.

18 The defendant-- The second element is, the
19 defendant took the van by force, violence, or intimidation.
20 Now, what happened at the house, ladies and gentlemen? What
21 does the credible proof tell us happened at the house? Well,
22 these three individuals, the defendant and -- accompanied by
23 Mr. Matthews and Mr. Marshall, go to the victim's house on
24 August 6, 2003, with the intent of robbing him, taking money,
25 taking -- getting PIN numbers or whatever; and when they get

1 there, they confront -- Mr. Matthews confronts the victim,
2 ultimately, at gunpoint, takes him into the house; the
3 defendant joins him in the house; they come back; they put the
4 victim, at gunpoint, in the back of his van at his residence
5 in Georgia; they then drive for two and a half hours, or two
6 hours, with the victim being held at gunpoint. Mr. Marshall
7 saw it. We know it ended up being that way. We know from
8 Ms. Belcher's testimony that --

9 MR. CLEMENTS: Excuse me. When he says "we," seems
10 to give the impression of improper vouching. He can say the
11 jury knows, you know, but "we" indicates the U. S. Attorney's
12 Office, all their witnesses, and everything else, and I think
13 that's an insinuation of improper vouching. Thank you.

14 THE COURT: Mr. Neff?

15 MR. NEFF: Your Honor, it's not improper vouching.
16 I'm just talking about the uncontroverted facts in the case.

17 THE COURT: I think he's objecting to the use of the
18 word "we."

19 MR. NEFF: I can adjust that, Your Honor.

20 Ms. Belcher testified that the victim had no
21 business in Tennessee, had not been in Tennessee, and in fact
22 had other plans for the day. So there can be no question that
23 the victim was taken by force, violence, and intimidation.
24 Ultimately, of course, we know that the firearms were
25 discharged inside the van and the victim was shot and killed.

1 We know from the third element -- or in the third
2 element, there is no question that the vehicle had previously
3 crossed state lines. There is a stipulation to that fact, and
4 that's one of the elements of the case.

5 The fourth element, the defendant intended to cause
6 death or serious bodily harm to that person. Well, the
7 victim's dead. He shot him. He shot him in the mouth. There
8 is no question about what the intent was.

9 And obviously, fifth, in committing the offense, the
10 defendant caused the death of Guy Luck.

11 So those are the elements of that particular
12 offense.

13 The emergency room doctor said something
14 interesting; he said that they had to empty the blood bank,
15 empty the blood bank, in order to try to save Mr. Luck from
16 the defendant's actions.

17 Now, the next charge is kidnapping. Go over to
18 those elements for you. And some of the same proof is going
19 to cover these various issues. "Defendant knowingly and
20 willfully seized, confined, kidnapped, abducted, or carried
21 away the person named in the indictment."

22 Again, Mr. Marshall saw Mr. Matthews take the victim
23 at gunpoint in Georgia. The defendant joined them in the
24 house, brought him out, put him in the van at gunpoint, and
25 drove him away. Again, Ms. Belcher testified that the victim

1 had no business in Tennessee, and actually had plans for that
2 day. We know -- or Ms. Gallant testified that she saw the
3 defendant's vehicle driving around the neighborhood that day
4 at the time of the -- at the time of the kidnapping. There
5 was a two-hour drive across state lines with the defendant
6 driving the van. And, once again, the victim ended up dead in
7 Tennessee from multiple gunshot wounds. His blood was found
8 inside the van. The defendant's guns were both found inside
9 the van, guns which the defendant had shown up with originally
10 fully loaded, also with gloves. He was transported across
11 state lines. There is no question about that, that this case
12 started in Georgia and ended up in Tennessee.

13 The defendant held the victim for ransom, reward, or
14 otherwise. Well, they took money from the victim and split it
15 later on, ultimately using -- the defendant using, and
16 Mr. Marshall using, that money that evening to pay for a trip
17 to a restaurant. So there is no question there was some cash
18 stolen from the victim in the case.

19 But also we know something very important about --
20 I'm going to get into this in a minute, but we know something
21 very important, another reason why he was kidnapped and held
22 for a while before ultimately the defendant killed him, and
23 that's because there was a prior history there of burglaries,
24 there was a prior -- there were warrants out for the
25 defendant's arrest, and he became aware of that when he went

1 inside the house, he became aware of that when he saw the
2 paper work sitting on Mr. Luck's desk.

3 The last-- I would also mention that the victim,
4 when he stumbled out of the car, said several things that are
5 very important. One of them was, he said that "They robbed
6 me," which would satisfy this element, "They shot me," and he
7 kept indicating that he felt he was going to die.

8 Now, the other count in the case-- There's actually
9 two counts of firearms murder. We would have to prove that --
10 with each of those, that the defendant committed either the
11 kidnapping or the carjacking in the first place.

12 The second element is that the defendant used,
13 carried, or discharged a gun during the offense. Obviously we
14 have the guns that were recovered from the van; this one, the
15 one the defendant used to shoot the victim in the mouth with
16 and shoot him two more times; and we have this one,
17 Mr. Matthews' gun, which is the one that took the first shot.
18 (Indicating.) So we know they had guns. Those guns were
19 recovered. The guns were loaded when officers recovered the
20 firearms at the scene, by the way, in the same exact location
21 inside the van, right there, right next to the driver's seat,
22 on top of each other, sitting on top of a glove, the other
23 glove caught in the seat belt -- seat belt strap.
24 (Indicating.)

25 Bullets were fired. Obviously several of them ended

1 up in the victim. When you look at the photograph of the gun
2 after it was recovered, it shows the rounds that were fired
3 from the .38. Obviously the 9mm -- there's proof about the
4 fact that the first shot was fired, the second shot
5 stove-piped. So the victim ended up being shot. He ended up
6 dying. And Mr. Matthews ended up with the same caliber .38 --
7 or the same kind of round, .38 caliber round from Mr. Taylor's
8 gun, is what ended up in the stomach contents of the victim.

9 The defendant caused the death of the victim. There
10 is no question about that. The victim's dead. There is a
11 gunshot wound to his mouth. There is his blood all within the
12 van.

13 Then the other elements to this particular crime
14 involve malice aforethought during the kidnapping and having
15 the murder occurring during the kidnapping and/or the jury
16 could also find that the defendant committed the crime with a
17 willful, deliberate, malicious, and premeditated intent. So
18 what I want to talk to you right now about is that intent and
19 some of the indicia of the defendant's intent during this
20 case.

21 Now, obviously nobody's psychic. And we discussed
22 this in the beginning. It is hard for-- It's hard to look
23 into somebody's mind and find out what they're thinking. We
24 can know what they're thinking by looking at their surrounding
25 actions. I want to break this down into three parts. I want

1 to talk about the things that the defendant did prior to the
2 murder, I want to talk about the things that happened around
3 the time of the murder, and I want to talk about the things
4 that happened after the murder. These are all excellent
5 indicia of the defendant's intent.

6 We know he was engaging in a large-scale scheme to
7 burglarize residences in the neighborhood belonging to the
8 defendant. The purpose of the scheme was evident from his
9 arrest when he was trying to buy stuff in De Kalb County using
10 somebody else's credit card, the discovery of multiple
11 victims' -- burglary victims' items in an apartment that's
12 tied to him in Rockdale County, and the discovery of other
13 victims' items in the Impala, as well as Joey Marshall's
14 testimony, which is corroborated by all of those particular
15 facts, that this scheme had been going on for quite some time
16 and the defendant was basically engaged in trying to steal
17 identities and credit cards.

18 Now, we know our victim was an easy mark because he
19 was rarely at home, the house was often empty, and there was
20 mail sometimes left on the ground. He didn't -- he didn't
21 stay at that place every night. So it was easy to pick him
22 out as a victim in the case, and that's ultimately what the
23 defendant did.

24 The defendant, when confronted with these, was an
25 unrepentant liar. He tried to manipulate Detective Clowden.

1 He tried to manipulate Detective Wolfe with different lines
2 about where he had gotten the credit cards and what he was
3 doing. All of these things that I'm talking about, the
4 defendant's schemes, his lies, his manipulations, and the fact
5 that he uses people, and kills if necessary, is indicative of
6 his intent in this case.

7 Ultimately the defendant moved from simply
8 burglarizing this particular victim to stalking him. He went
9 to the restaurant and ate. He committed multiple burglaries
10 at the victim's house. He was casing the victim's other
11 house. He found out about the other house by following the
12 victim from the restaurant. And also one of the items
13 recovered from inside the victim's residence later on -- or
14 photographed inside the victim's residence later on was a
15 piece of mail with the other address, the Abbey Lane address,
16 on it.

17 The stalking then changed to something more
18 sinister. The stalking became what we saw the end result of
19 here. This time when the defendant went to the victim's
20 house, he didn't go to the victim's house with gloves and wire
21 cutters. This time he went with gloves, guns, and no masks.
22 This time he went with loaded guns, loaded the same way, by
23 the way, as the gun -- one of the guns that was found in the
24 defendant's house later on, with that unique wad cutter bullet
25 that we talked about during the trial. So obviously we're

1 moving along, we're progressing, his intent is becoming more
2 and more obvious.

3 Discussing what happened right around the time of
4 the murder, at the point that they confronted the victim at
5 his house and took him inside the house. You saw the
6 photographs of what was inside the house. You saw the
7 photograph of the paper work that was sitting on top of the
8 victim's desk. Defendant saw that paper work, and his plan
9 became even more sinister. He saw that paper work and knew
10 that he had been identified as one of the thieves. And notice
11 that he left credit cards, he left a checkbook, and he left
12 money and cash at the victim's residence, which also indicates
13 that his intent has now changed and become what his plan is
14 going to be.

15 Now, somebody might argue that the manner in which
16 the murder took place was more indicative of somebody who's
17 reacting to events rather than a plan. And, you know,
18 obviously the van ended up being driven off the road, the
19 defendant left the victim there while he was still alive, and
20 there's still unfired bullets in the revolver. But the answer
21 to this question about why it happened that way and whether
22 this was a reaction by the defendant really is fairly simple.
23 The defendant planned to kill Mr. Luck, but it didn't happen
24 the way he planned, because the victim saw what was about to
25 happen and forced the issue by trying to fight for his life.

1 Obviously the defendant had to react to that, and he reacted
2 in the way that he did, still accomplishing the mission he set
3 out to accomplish.

4 When they drove to Tennessee, they passed by
5 numerous banks, ATMs, and other businesses, places where they
6 could have gotten money. It was a two-hour drive. Now, why
7 didn't they kill him in the house? They could have killed him
8 in the house, but that would obviously mark him as a suspect
9 and risk leaving too much physical evidence at the scene.

10 Instead they drove far away, into another state and a far away
11 place, to dump the body and dump the van. They drove him for
12 two hours without wearing masks. And what does that tell us?
13 Are you just going to drop him off on the side of the road and
14 tell him to find his way home so he can identify them when he
15 gets back? No way. That doesn't make any sense. So there is
16 no question what the end of the road was going to be.

17 Now, Mr. Marshall testified that they stopped at the
18 side of the road and the defendant came back and asked him if
19 he needed gas and also mentioned that the guy whose van they
20 were driving was the one he thought that took the warrants out
21 on him in Rockdale County. Joey testified he wasn't inside
22 the house. He wouldn't have known about that paper work. So
23 it's interesting that the comments by the defendant match the
24 evidence found inside the house.

25 They passed by multiple populated and rural areas in

1 Georgia, but they kept driving. They crossed state lines.
2 They traveled into a more and more obscure area. You saw the
3 video of the drive; you saw what it was like; you saw that it
4 became less and less populated and more and more rural. Then
5 they turn around and drive back and forth, up and down rural
6 roads in Collegedale, Tennessee. What was the victim's
7 natural reaction to this? Now, we don't know what was said
8 specifically inside the van, obviously, but the victim knew
9 what he was -- what was about to happen to him. He sees that
10 they're traveling down this rural road and they're going back
11 and forth. He sees this road that's bounded by a creek on one
12 side and a heavy wooded hillside area on the other. It
13 doesn't take a rocket scientist to figure this out.

14 THE CLERK: You have two minutes.

15 MR. NEFF: He knew. And his decision was evident
16 from the fact that he tried to attack two younger and stronger
17 men, knowing they both had guns. The defendant then fired
18 multiple shots. He shot the victim in the mouth at a downward
19 angle. There is no question what your intent is when you cause
20 injuries like that. Then they left him there and didn't report
21 it immediately to eyewitnesses. If he were innocent, he
22 wouldn't do that. The victim then stumbled out and said, "They
23 robbed me," but he didn't identify them. He didn't know who
24 they were. That's not what he would have said if this were
25 about something else.

1 After the murder the defendant has the wherewithal
2 to flip down the license tag. Innocent people don't do that.
3 The defendant later, when he was arrested, was found hiding
4 naked in a fridge. Innocent people don't do that. Later on
5 there was evidence that was attempted to be destroyed—the
6 trash can with the clothing, the car being trashed on the
7 inside. People don't try to destroy evidence if they're
8 innocent. Later on the defendant attempted to escape.
9 Innocent people don't do that, either. And then there's
10 finally the defendant's ongoing conspiracy and manipulations
11 with Mr. Matthews. Innocent people don't do that.

12 The defendant thinks that you're not very bright,
13 and he's trying to manipulate you the way he manipulates
14 everybody else. He thinks that if he can manipulate
15 Mr. Matthews into maybe withdrawing from his guilty plea and
16 coming up here and testifying in contradiction to what he had
17 earlier said -- and there is a version of Mr. Matthews' story
18 in his sworn statement to the Court that he made under oath in
19 his plea, but he's trying to manipulate you like he
20 manipulated Mr. Matthews in --

21 MR. CLEMENTS: I object.

22 MR. NEFF: -- getting him to change his --

23 MR. CLEMENTS: I object to that. He can't know what
24 the defendant thinks. And he is speculating. There is no
25 evidence in the record as to that. It's improper for him to

1 speculate as to what the defendant is thinking, particularly
2 when it relates to Mr. Matthews. Thank you.

3 THE COURT: Mr. Neff?

4 MR. NEFF: Your Honor, that's a very fair and
5 reasonable, and certainly probably the most reasonable,
6 inference that can be drawn from the evidence in this case, the
7 evidence of the defendant and Mr. Matthews being in the same
8 cell for a year, the evidence of items found in Mr. Matthews'
9 possession. That's the best inference that can be made. And
10 in argument I'm allowed to draw those reasonable inferences.
11 And I'm asking the jury to do the same thing.

12 THE COURT: If you put it in those terms, the Court
13 will overrule the objection. But if you state it as facts that
14 were established by the evidence, then the Court will grant the
15 motion.

16 MR. NEFF: Well, I'm almost done here, Judge. So
17 I'll put it together.

18 Obviously, ladies and gentlemen, Mr. Matthews and
19 the defendant have been in the same cell for a year. Again,
20 it doesn't -- it's not difficult to figure out what's gone on
21 during that year. They're trying to make the testimony match
22 the evidence the best they can. But unfortunately the
23 story -- unfortunately for the defendant, the story is
24 ridiculous. It's a matter of common sense. We talked about
25 earlier that Mr. Matthews is lying. The attempt to do this is

1 insulting to the Court, it's insulting to you, and it's
2 egregiously insulting to the victim and his loved ones. They
3 laid in wait for the victim on August 6, 2003, and attacked a
4 defenseless man; and they did it again on September 3rd, 2008,
5 to attack the victim after they've already killed him.

6 In conclusion, ladies and gentlemen, we've come to
7 the end of the road. Unfortunately this road was Guy Luck's
8 road to death. Fortunately, though, you will provide him and
9 the people of the United States with justice. At the end of
10 this road for the defendant is his guilt. Thank you.

11 THE COURT: Mr. Clements?

12 MR. CLEMENTS: Thank you, Your Honor.

13 Ladies and gentlemen of the jury, Rejon Taylor and
14 our defense team thank you for doing your duty; that's serving
15 on this jury and standing between the government and another
16 American citizen.

17 If my recollection of the facts differs from your
18 recollection collectively or individually, ignore what I say.
19 I don't have a photographic memory, and I may have lost a step
20 or two. But you are the most important people in the system.
21 You're 12 to 16 judges without robes. You would not have been
22 selected if we hadn't believed you when you said that you
23 would vote not guilty if the government had not proven Rejon
24 Taylor guilty beyond a reasonable doubt, even if you thought
25 he might be guilty, even if you thought possibly he was

1 guilty, or almost probably guilty. You would not have been
2 selected if we hadn't believed you when you said that you
3 would presume him innocent because that was the law.

4 So you are selected people. The system of justice
5 would not work without you. There's no experienced lawyers or
6 judges that would do away with the jury system. That's the
7 first thing that tyrannists do when they take over, or
8 Communists do—do away with the jury system. That's the
9 reason I say that you're the most important people in the
10 system.

11 Now, let's discuss reasonable doubt. If I give you
12 no reasonable doubt, ignore what I say. But hold them to the
13 same standard. (Indicating.) And I'm not going to say "we,"
14 but I'm going to tell you Mr. Neff wasn't there for anything,
15 he doesn't know any more than I do. He may be smarter, but he
16 doesn't know any more about the facts than I do.

17 Now, let's go down the reasonable doubts. Here is
18 Mr. Chris Chambers. I believe he's an honest man. I believe
19 he's a good detective. And they're trying to show that this
20 is a premeditated, willful, malicious murder beyond a
21 reasonable doubt. What does Detective Chambers say? The
22 ignition was running. The guns were in the car. There's
23 blood on the front -- both the front seats. There's blood on
24 the windshield. There is no conclusion, I suggest, that you
25 can come to other than that there was a struggle and no intent

1 to kill. Do you think that I'm going to plan a premeditated,
2 malicious murder and leave the keys in the ignition in the
3 car, leave the guns in the car, and have it running? I
4 suggest to you that that is unreasonable. Now, I've still got
5 enough sense to know that it's not what I say, it's what you
6 say, it's not what we say.

7 Now, let's take Number 2, Stephanie Belcher. She
8 seemed like a nice woman to me, but there's some curious
9 things. And I want you to tie these in -- or suggest to you
10 that you tie these in to Sir Jack Matthews' testimony.
11 Exhibit Number 507. (Indicating.) This is a modest
12 restaurant in Atlanta. Now, Mr. Neff is talking about
13 robberies and burglaries and so on and so forth. But when
14 they left on this day-- I want you to look, please, if you
15 will, at Exhibit Number 520. This is the door. Look right
16 down here. (Indicating.) It looks to me-- You make your
17 decision. It looks to me like it's bolted from the inside.
18 Is that consistent with an abduction, a kidnapping, and a
19 carjacking? It can't be.

20 Plus, there's something kind of funny going on.
21 There's nothing wrong with somebody moving from France that's
22 a lawyer, I mean, to Georgia, there's nothing wrong with
23 making a lot of money in a brief period of time, and nothing
24 wrong with having cash in your house that Detective Dunn
25 found. I don't have stacks of cash in my house, and I don't

1 think that many people do. But this is what he found.
2 (Indicating.) And let's think about how he got in the house.
3 Let's think about how he got in the house. It was a little
4 bit hard for me to hear Detective Dunn because he was turned
5 towards you. That's all right. I'm not complaining about it.
6 But, you know, Ms. Belcher said he had three houses. She
7 would not let him go in the Beechwood house, wouldn't let him
8 go. I don't think she stated the reason, really. I really
9 don't remember. But if she stated a reason, I didn't hear
10 her, didn't make a note of it. She wouldn't let him go in.
11 Something funny is going on. Plus, how does Detective Dunn
12 get in the house? He has to go through the window. And he's
13 got a search warrant. He is a police officer. Mr. Neff
14 suggests to you, well, they had some kind of paper there. We
15 don't know if it was a credit card company or what it is. Two
16 credit card companies are laying on it. Well, if it was
17 important to the police, why didn't they keep it? They didn't
18 keep it.

19 I'll tell you one thing, this man right here is a
20 good officer. (Indicating.) He's served his country, just
21 like all these other people have over here, been in the
22 Airborne like some of these other people have been over here,
23 been in combat like some of these other people have been over
24 here. They know what they're doing. If that had been an
25 important piece of information to them, they'd have kept it;

1 they're too smart not to.

2 Now, let's talk about Sir Jack. And I hate to read
3 things to you. I'm going to read something to you, because
4 I've got a big obligation on me and I'm afraid I'll drop the
5 ball and then I won't remember something. And I don't like to
6 criticize anybody's mental acumen or their IQ or how smart
7 they are, because there's a lot of things I can't compete in.
8 I barely passed freshman physics, and that's with study. But
9 the truth of the matter is, Sir Jack Matthews isn't the
10 brightest bulb in the field house. Do you think for a minute
11 that he could come up with these Asiatic nudes, delivering
12 marijuana, and a struggle, and that he shot first, if it
13 hadn't been true? I suggest to you no. Has he told some
14 lies? Yeah, he's told some lies. But he didn't lie like Joey
15 Marshall. Joey Marshall lied to save himself. Now, I'll tell
16 you one time that I don't believe anybody will lie except for
17 rare exceptions, and that's to lie when you're exposing
18 yourself to death, to the death penalty. And he said he did
19 it to have peace. And we know as human beings-- Most of this
20 jury is older. I'm probably the oldest person in the
21 courtroom. But every time in our life, whether we're a good
22 athlete, an average athlete, or an average person -- and I
23 don't think there is any such thing as an average person or
24 ordinary person, because I think it's the ordinary people, the
25 people that's their blood that's on the battlefield, it's them

1 that pay the taxes, it's them that set the moral standards of
2 the country, and it's them that find the facts. How many
3 people-- You can read philosophy, and you can read history.
4 How many people would lie so they could go to the death
5 penalty?

6 There is nothing Rejon Taylor can give Joey
7 Matthews, not a thing. He can't help him. He can't help him.
8 There's no motive for him to lie. Joey Marshall will come up
9 here before this Judge, who is the law, and swear to a set of
10 facts, and then take this stand, when they've been interviewed
11 by these people, who are all smart, who all have plenty of
12 experience, and tell a story—"I didn't even know he was in
13 the van." If he didn't know he was in the van, it's like
14 Mr. Ortwein brought out, he's innocent. And he pled guilty.
15 If they had a race-- I don't know how many people run the
16 Boston Marathon. I don't know how many there's in -- even how
17 far it is. But if you had a race full of liars, I would
18 put -- if I was a betting man, I'd put my money on Joey
19 Marshall every time, because he'd at least place, and probably
20 bring in the blue ribbon most of the time.

21 Now, let's think about Mr. Westlake. If you're
22 going to kill-- Mr. Neff has suggested, not very subtly—in
23 fact, I think he's done it point-blank—that this is a
24 killing, you know, "because I could possibly be prosecuted."
25 Mr. Westlake took the stand. Preliminary hearing. Detective

1 Clouden testified to it. Rejon Taylor's there. They know the
2 address. There's five warrants out for him. As far as I
3 know, there's never been any proof that there's a warrant out
4 for Mr. Taylor, or Rejon, by Mr. Luck. If there is, I missed
5 it. Mr. Westlake testified he was never threatened.
6 Certainly nothing ever happened to him.

7 Now, let me go through a couple of things. And I
8 have the transcript here. And I know it's boring, or it may
9 be boring. And, you know, you talk too long and people simply
10 won't listen to you. And maybe I'm just getting antsy in old
11 age, but when I go to church and the preacher talks over 30
12 minutes, I'm about exhausted. But this is some of Joey
13 Matthews' testimony. "Had to stop at an apartment, making
14 light conversation." He's talking about, basically, like, how
15 he'd do females and so forth. And then he says, "You got me
16 blanked up." And then he talks about the naked kids. That's
17 Sir Jack and Luck's conversation. And that's when the ruckus
18 starts. Sir Jack admits that he shot him because Mr. Luck was
19 going to shoot him. And he shoots him in the arm, hits him
20 over the head with a 9mm.

21 You heard Dr. King. Autopsy man. Honest. You
22 know, honest as you could be. Doesn't pretend to know
23 everything; "This is the best I can do. This is what I
24 think." And no question that he's hit over the head. Sir
25 Jack admits that he hit him over the head and the gun jammed.

1 This was a spontaneous ruckus or fight. After that, Rejon
2 shoots wildly, not intentionally, because he doesn't know
3 what's happened. In fact, one shot hits Joey Matthews and
4 goes through him.

5 Now, listen, if you intend to kill somebody and
6 you've got a .38 -- and Detective Chambers said there's two
7 rounds left. If I've gone that far, I'm going to make sure
8 they're dead, particularly if I've got two rounds. I'm not
9 going to let them get in the front seat where they may shoot
10 me.

11 And you'll remember Dr. or Ms. Bash—I'm not sure of
12 the total pedigree—testifies that there's Sir Jack's blood
13 and there's the victim's blood in the front seat, front
14 passenger seat, front driver's seat, and on the windshield,
15 both, indicative of a struggle, indicative of a struggle, not
16 a premeditated, not a malicious, not a killing. And that's
17 what they testified to. That's their proof. That's what they
18 put on.

19 And by the way, who put Sir Jack Matthews on? Was
20 it Rejon Taylor's defense team? No. It was Mr. Neff and
21 Mr. Poole and Mr. Melia. And he says that they talked to him
22 a week before. That's what he says. They're the ones who
23 have put him on, not Mr. Ortwein or anybody else on the
24 defense team.

25 Now, Joey Marshall is, frankly, just slicker than

1 Sir Jack. You know, his own testimony, he doesn't really care
2 about anything. That's just the truth. You saw the
3 cross-examination Mr. Ortwein brought out of him: "I sell
4 cocaine. I really don't care. Yeah, I do, but it's for the
5 money. I sell marijuana." That's what he does. He is a
6 manipulator. He is the one who's trying to cover his tracks.
7 He's the one that has the girlfriend write the alibis; he
8 corrects it, he edits it, he bumps it up. And then, according
9 to Sir Jack, he's the one that comes up with, "Let's just lay
10 it on Rejon."

11 Now, let me tell you, I don't know what people will
12 admit to now, and I know times have changed. I'm 72 years
13 old. I'm from a coal mining town. Stayed in the military off
14 and on, counting the Reserve, for 20 years. And maybe I live
15 a sheltered life, maybe I do; I don't know. But the last
16 thing you would admit or talk about, people my age -- I don't
17 know about now. Talk about anything. That may be all right,
18 too. This is a free country. But most people aren't going to
19 admit, in public, most people-- And I'm not criticizing
20 anybody's appetites or habits or any of that, and please don't
21 think I am obliquely. But most people aren't going to admit,
22 where I'm from, that they have these certain types of
23 proclivities and appetites. And he does, and he says. Well,
24 that blows me away. But they make up this deal to lay it on
25 Rejon.

1 Now, there is another thing that I want you to think
2 about. And this is what he says. And Sir Jack can't express
3 himself adroitly. He doesn't even feel the pressure of a
4 courtroom, a distinguished judge, and the aura of this
5 building. He gets up there and talks, in front of you, in
6 front of the Judge, in front of everybody else, just like he'd
7 talk on the street. The Judge has to suggest to him, you
8 know, "We don't use profanity in the courtroom." And he says
9 at the end, "All I want, all I want, is peace." What's more
10 believable?

11 Now, the fight and the struggle was after Mr. Luck
12 says, "You're the ones that burglarized me after I found the
13 nude pictures." My notes say "Asiatic girl." I'm not really,
14 really sure that that's what he said. But it was nude
15 pictures of little girls. And he says, "Because when the dude
16 got up with the gun, know what I'm saying, later on when we
17 were leaving in the car, he said he thought the dude had shot
18 me." And now he's talking about Rejon. "He didn't even know
19 that I had Joey's gun."

20 Now let me tell you about some of the things that
21 Joey says. He admits writing his girlfriend—this is on
22 direct examination with Mr. Neff—asking her to lie. He'll
23 ask anybody to lie. Says, "So you lied several times, 2003 to
24 2004." Well, he starts changing his lies when he knows he's
25 not going to face the death penalty and the chair. He didn't

1 plead-- He did plead guilty to life without parole, with the
2 possibility of getting a downward departure at the
3 recommendation of these people. (Indicating.) And they had
4 the sole right to make the recommendation, the sole right to
5 make the recommendation. And then it was up to the Judge to
6 see whether or not he would -- he would take the
7 recommendation.

8 Now, something else. And forgive me for jumping
9 around, because this has been a little bit hard for me to
10 organize, and I'm disorganized by nature, anyway. Joey talks
11 about getting the mailboxes. Now, no question Joey's a thief.
12 No question that Rejon Taylor's a thief. I'm not trying to
13 paint him as one of the 12 apostles or George Washington or
14 Abraham Lincoln. But he's not a murderer.

15 He doesn't even-- Now, he's running a business, got
16 these houses. He won't let his girlfriend in there. They go
17 by and look at these houses, or this house. And I believe
18 this one's on Beechwood, he says. I guess an upscale
19 neighborhood of Atlanta. Well, he's finding credit cards -- I
20 mean, excuse me, not credit cards, but mail just falling out
21 of the mailbox. He apparently never even picks up the mail,
22 or doesn't care. Is that the kind of person that's a
23 legitimate businessman? I don't know if any of you have ever
24 worked in a restaurant or not, but if it's a small, home-owned
25 restaurant, you got to hump it out to make a living, and you

1 watch what you spend, you watch what you pay. That's just
2 logic.

3 And this is Joey's statement: "We were just riding
4 by one night. He had mail coming out of it. It was
5 overpacked with mail. Also on the ground. The mail had piled
6 up pretty high. So we stopped and put it -- put his mail in
7 the mailbox."

8 Now, another example of how clever Joey is, or how
9 clever he thinks he is, he comes up and testifies here in this
10 court, and he's still trying to put it up on Rejon, but he's
11 shrewd enough to know that if he says he knew about Mr. Luck
12 being in the van, he's going to get what he's agreeing to,
13 life without parole. Well, then he says he didn't even know
14 about it. Well, if he didn't know about it, he can't be
15 guilty, he can't be.

16 MR. NEFF: Your Honor, I would object to that
17 statement because that's not an accurate statement of the law.

18 THE COURT: Ladies and gentlemen, it's permissible
19 for the attorneys to tell you what they think the law is during
20 their closing statements, but the Court is going to give you
21 the law. If what I say about the law conflicts with what the
22 attorneys say, you must follow what I say and not what the
23 attorneys say.

24 MR. CLEMENTS: Thank you, Your Honor.

25 Joey -- I mean, Joey Marshall says-- "And I take

1 it--" And this is on cross-examination. "I take it by your
2 testimony today you did not know Mr. Luck was in the van. Is
3 that right?

4 "No, I didn't. No, I didn't."

5 Let me go over a few things. And I hope I don't
6 have this messed up, because Judge Collier's exactly right; he
7 is the law, not me. And I have his jury charge here, which
8 I -- there have been a few changes made, but I -- he is going
9 to charge you what the law is, and you're to take what he says
10 as the law, and not what I say.

11 Now, Count 1, or Charge 1, is the carjacking
12 resulting in death. The charge goes through all the elements,
13 and one of them is, while taking or attempting to take the
14 motor vehicle, the defendant, in this case Rejon Taylor,
15 intended to cause the death, and that you're to judge that,
16 whether or not he intended to cause harm, by an objective
17 standard, not by a subjective standard, not what you feel or
18 guess or speculate at, but an objective standard, and that the
19 defendant intended to cause death or serious bodily harm if
20 the victim had refused to turn the car over.

21 Charge 2, murder with a firearm during and in
22 relation to carjacking. If, of course, there is no
23 carjacking, of course he can't be guilty of that count. And
24 then the second and third -- excuse me, the third and fourth
25 -- excuse me, fourth element on Count 2 is, the killing was

1 committed during the perpetration of kidnapping, or willful,
2 deliberate, malicious, and premeditated. And then it goes
3 on-- I'm just going to read the highlights of the count.
4 "Kidnapping Resulting in Death," some of the elements in it
5 are knowingly, willfully. And then 4, "Murder with a
6 Firearm," it has to prove beyond a reasonable doubt that the
7 kidnapping was committed. And then the Judge will give you
8 the rest of these about the required mental state and so on
9 and so forth.

10 The things that I want to emphasize is that it's up
11 to the government to prove beyond a reasonable doubt that he
12 committed these offenses, that he intended to kill him,
13 premeditation, malice aforethought. We simply suggest to you
14 that the government has failed in its burden.

15 Now, I realize that there's a psychological
16 tendency, when the indictment's read that says "United States
17 of America versus Rejon Taylor"-- You know, I want my
18 government to be right every time. But the government can be
19 wrong in a criminal case and we've won, we, the United States.
20 And I know deep down inside that we always want to think the
21 executive branch of the government is right. I do. It
22 doesn't make any difference who I voted for for President, if
23 he loses, or U.S. Senate, I want them to be right, every time,
24 because I want myself, my children, my grandchildren, to be
25 the beneficiary of their right decisions, even if I think

1 they're wrong at the time. That's human nature.

2 But we know from history, from reading history, and
3 you're old enough to know now, that our executive branch of
4 the government has made many, many mistakes. I'm not saying
5 they were willful mistakes. I'm not saying they were
6 malicious mistakes. I'm not saying they were knowing
7 mistakes. But they have made mistakes, and we have seen it.
8 And they're not always right.

9 So don't just think-- Follow the Judge's charge,
10 follow the law, which it's your duty to do, that the
11 indictment is simply a charge, it's simply a piece of paper,
12 it's not evidence of guilt, because at that point Rejon Taylor
13 has not had a chance. And we know through our life
14 experiences that there's at least two sides to every story.

15 Those of you that have had children know that who
16 gets to go first makes the biggest impression on you. As my
17 children grew older, I would bring them all in together, if
18 they were all there, because the first one -- I couldn't help
19 it; I knew that I tended to believe the first one that got to
20 me. I just could not help it. So I had to get them all in
21 there together. And they would kind of fizzle down, if I had
22 enough patience to finally listen to it all, and try to work
23 it out.

24 But one of the reasons lawyers can't talk to a judge
25 without bringing the other lawyer there and with the judge's

1 permission is because the judge does not want to be influenced
2 by an ex parte communication. If I went to Judge Collier, or
3 Mr. Neff, or any other lawyer, and tried to see him about a
4 case without the other lawyer there, he would hold me in
5 contempt, and he should hold me in contempt, because that
6 would be unfair, that would be a chance to influence him. So
7 please listen to both sides, because that's your duty and
8 that's what makes the system go.

9 Now, as another thing, I generally like practicing
10 law. There's two things, at least two things, I haven't
11 liked; one, when I sit down after giving a jury argument,
12 thinking about all the mistakes I've made, the things I should
13 have said. And not trying to be humble pie, I can't believe
14 some of the things I forget and how stupid I am. But I don't
15 have to come up with all the reasonable doubts. You can use
16 your own judgment. And what I've overlooked, you can come up
17 with the reasonable doubt.

18 Now, the government gets to go last, and the reason
19 they get to go last is because they have the burden of proof
20 on every element of the offense beyond a reasonable doubt or
21 it's your duty under the law, under the law, just as much as
22 it's your duty to pay your tax and obey the law, it's your
23 duty under the law to vote not guilty if they haven't proven
24 every element of the offense beyond a reasonable doubt. And I
25 suggest to you that they won't argue to the contrary.

1 Now, lawyering is not who you like best; it's
2 whether or not you can follow the law. I suggest to you under
3 the facts of this case and under the arguments given by the
4 government, the executive branch, that you should return a
5 verdict of not guilty on every count, and that will be a
6 verdict sanctioned by your logic and ratified by the law that
7 Judge Collier has given you. Thank you for serving your
8 country. And we all thank you.

9 THE COURT: Mr. Poole?

10 MR. POOLE: Mr. Clements is right about a couple of
11 things, and one is that it's not about which lawyer is more
12 likeable; and I'm glad, because there is not anyone more
13 likeable than Mr. Clements.

14 He's also right when he says the United States makes
15 mistakes. We called Sir Jack Matthews to the stand. There is
16 no doubt about that. That was a mistake. But think about
17 that. Mr. Clements says Sir Jack Matthews is not the
18 brightest bulb in the house, he couldn't have come up with
19 these lies, he's not as smooth as Joey Marshall. He also says
20 Mr. Melia and we are smart. I'm not sure that's true. But
21 Mr. Melia told you we talked to Sir Jack Matthews over ten
22 times in the last five years about what happened that day. If
23 he wasn't able to fool us, if he wasn't smooth enough to fool
24 us about what his story was that day, do you think we would
25 have called him to that witness stand? If Joey's the smooth

1 one, not Sir Jack, why would we have called Sir Jack? It's
2 because for ten meetings over five years he told a totally
3 different story, and the story that he told then matched the
4 physical proof.

5 This is not Sir Jack Matthews versus Joey Marshall
6 and who you have to believe; it's Sir Jack Matthews' story
7 versus common sense, all the evidence you heard; Joey
8 Marshall, who is backed up by the evidence; and the law that
9 the Judge gives you. Sir Jack Matthews probably couldn't have
10 come up with that story on his own; and lucky for him and
11 lucky for Mr. Taylor he didn't have to, because he's been in
12 the cell with Mr. Taylor since September of last year,
13 together. We know they were plotting and planning this and
14 that Mr. Taylor was affecting this. Use your common sense.

15 Mr. Neff asked Sir Jack Matthews, "Who are your
16 cellmates?" What did he say? "Chris." Tony. He starts
17 looking for names. Mr. Taylor was his cellmate from September
18 of 2007 until he testified last week. He didn't remember
19 that? Why wouldn't he tell you that Rejon Taylor was his
20 cellmate, unless there was something about that relationship
21 he didn't want you to know? Why did he have Rejon Taylor's
22 legal mail in his possessions? And look at what that mail
23 was. Look what the contents were. It was all Sir Jack
24 Matthews' statements, stuff he already had, stuff Mr. Marshall
25 pointed out to you that was provided in discovery, stuff

1 Mr. Melia pointed out to you we told the defense every time
2 Sir Jack Matthews changed his story. Was it to go over his
3 story and make sure he could try and back up the physical
4 evidence with the story he and Mr. Taylor created? Think
5 about that. Use your common sense.

6 Why would Sir Jack Matthews and Joey Marshall sit in
7 jail for five years if they didn't do anything wrong and it
8 was all self-defense? Why just come up with that story for
9 the first time now? Is Joey Marshall so afraid that somebody
10 might think he's gay that he is going to spend the rest of his
11 life in jail? Does that make sense? He's been sitting in
12 jail for five years. He pled guilty to life without parole.
13 He got up here and he testified to being involved in stalking
14 and robbing and killing a man. But none of that's true?
15 Really he didn't do anything wrong? Nobody really did
16 anything wrong? This man tried to pull a gun on them, so it
17 was self-defense, Joey just doesn't want you to know he's gay?
18 Why didn't Sir tell that story in the last five years? Sir
19 doesn't say he's gay. Why doesn't he come up and say, "Hey,
20 no, no, no, I'm not pleading guilty to life without parole.
21 I'm not sticking with that story, because I didn't do anything
22 wrong. This guy pulled a gun on me." Is Sir Jack so worried
23 that somebody might think Joey Marshall is gay that he's going
24 to spend the rest of his life in jail? That's what he came in
25 here and pled guilty to. Does that make sense?

1 Mr. Clements says, "Oh, Mr. Taylor can't do anything
2 for Sir Jack Matthews." Can't he? Can't Mr. Taylor get up --
3 after he's acquitted on this story, get up and do the same
4 thing for Sir Jack Matthews, and say, "Oh, no, it was
5 self-defense"?

6 MR. CLEMENTS: Your Honor, I --

7 THE COURT: Sustained.

8 MR. POOLE: Use your common sense. Sir Jack Matthews
9 has never told this story before. He's with a cellmate. Comes
10 in, makes up a story, and what does he say? We'll go through
11 the little things that just defy common sense, defy reason.
12 But what does he do? He attacks the victim.

13 Rejon Taylor, Sir Jack Matthews, and Joey Marshall
14 went to Guy Luck's house on August 6, 2003, in the early
15 morning hours. Now, this is Rejon Taylor's day in court. And
16 Sir Jack Matthews tries to make it his day in court. But do
17 not forget it is also Guy Luck's day in court and it is
18 Stephanie Belcher's day in court.

19 Guy Luck did nothing wrong but wake up and try to go
20 to work, just like everyone does every day. He woke up in his
21 house in Atlanta, Georgia, and had a man hiding under the van
22 with a gun when he walked out into his driveway. And Rejon
23 Taylor and Sir Jack Matthews put that man in a van, and they
24 drove him for over two hours to a rural area in Chattanooga,
25 Collegedale. They shot him multiple times. And then Rejon

1 Taylor shot Guy Luck in the mouth at a downward angle. One of
2 the bullets that Rejon Taylor used to shoot Guy Luck was
3 recovered in his stomach, along with his teeth.

4 Stephanie Belcher testified to you. This is her
5 fiancé and co-business owner we're talking about. And the
6 last time she talked to Mr. Luck, he was going to call her the
7 next day, and he had plans. Does she see him again? Not
8 until she gets to Erlanger Hospital and he has just died and
9 she has to identify the body.

10 And you would think that Rejon Taylor and Sir Jack
11 Matthews couldn't do anything more to Guy Luck, could not do
12 anything more to Stephanie Belcher. But what did they do?
13 Now they're accusing him of being a gay, drug-dealing
14 pedophile. It's ridiculous. It's disgusting. It's
15 outrageous. And it's got to stop. And you have to stop it.
16 You have to stop it by using your common sense and following
17 the law and following the evidence that's backed up by other
18 evidence.

19 Joey Marshall. Joey Marshall told you they'd been
20 stalking this man. Joey Marshall told you they'd been
21 stealing mail. We know they had been stealing identities,
22 because Rejon Taylor gets stopped with Robert Westlake's
23 credit cards and --

24 MR. CLEMENTS: Your Honor, there is no testimony in
25 the record that Rejon Taylor has ever accused Mr. Luck of

1 anything.

2 THE COURT: I think he's referring to you. I don't
3 think he was referring --

4 MR. CLEMENTS: Referring to me?

5 THE COURT: Yes, uh-huh.

6 MR. WILLIAM ORTWEIN: He said Rejon.

7 MR. POOLE: I don't know what they're referring to.

8 THE COURT: Mr. Poole, who were you referring to when
9 you said the defendant is accusing Mr. Luck of being a gay,
10 drug-dealing pedophile?

11 MR. POOLE: I'm referring to the defense team, Judge,
12 who are embracing Mr. Sir Jack Matthews. And I'm also saying
13 the defendant and Mr. Matthews got this story together. And
14 the jury can draw that inference. And I think that's their
15 theory. I absolutely am including the defendant as being part
16 of the story Sir Jack Matthews said. And I think the jury can
17 draw that inference, Judge, based upon the proof.

18 THE COURT: I think he is referring to your remarks,
19 Mr. Clements, but he's also trying to attribute that to the
20 defense team in general.

21 MR. CLEMENTS: My understanding, Your Honor—I would
22 like a jury instruction—he made some remark about Rejon Taylor
23 testifying for Mr. Matthews. And we think that remark is
24 entirely improper, the Court will sustain the objection. It
25 never should have been argued.

1 THE COURT: Ladies and gentlemen, what Mr. Poole is
2 doing is responding to the arguments made by the defense. So
3 to the extent that he may have said something that -- he asked
4 you to believe that the defendant himself made certain
5 statements, you should reject that; and you should limit your
6 consideration of his remarks to what the other attorney said,
7 what Mr. Clements said.

8 Proceed, Mr. Poole.

9 MR. POOLE: Thank you.

10 What more could they do to this man, five years
11 after he's dead, but now ruin his reputation, now tell
12 Stephanie Belcher that the fiancé that she knew, who had done
13 nothing but fail to pick up some mail and been shot in the
14 mouth for it, and start a business from the ground up and work
15 hard at it and try and live what he described as the American
16 dream, done nothing wrong, is now being accused of being a
17 drug dealer, pedophile, and homosexual? There is no proof to
18 back that up, mind you.

19 Mr. Sir Jack Matthews says that they're over at Guy
20 Luck's house and there's a smell of weed and, you know, he and
21 Joey later are smoking weed. There is no proof of that.
22 There is no marijuana found in that house of Guy Luck. There
23 is no marijuana in Mr. Luck's system during the autopsy.
24 There is no marijuana in the van. There's not a big amount of
25 money in the van. There is no trace or residue of marijuana

1 in the Impala or anywhere else.

2 His story is that they all rode up in the van except
3 for Mr. Marshall, who drove behind in the Impala. You've seen
4 that van. Why wouldn't they ride in the Impala where it's
5 clean and the seats are there? There's nowhere to sit in that
6 van. His story is—if we can turn on the screen, we're going
7 to try and use the computer here—that Mr. Guy Luck is sitting
8 in the passenger seat of that van and that he is behind him.
9 This is a picture taken out of the crime scene video, which
10 you can watch. This is the same scene of the van. The story
11 is, that is where Mr. Luck is sitting on this two-hour-plus
12 ride from Atlanta. Watch the video. See if that makes any
13 sense. Here is a picture of it.

14 Go back to Elmo. Thank you.

15 Was he sitting on all that stuff for two hours by
16 choice? Remember, they're going there by choice. He doesn't
17 take some papers out of the van and sit down, when he's
18 driving up there for two and a half hours?

19 There is a shot in Mr. Luck's left back shoulder
20 area. Couple of things that don't make sense about Mr. Luck
21 sitting in the passenger seat, as Sir Matthews claims.
22 Number 1, if Mr. Luck is sitting in the passenger seat, why
23 does Rejon Taylor have to turn around to shoot him? Why
24 doesn't he just shoot him right next to him? (Indicating.)
25 And if it's because Mr. Luck is running in the back to attack

1 Sir Jack Matthews for some reason, wouldn't that bullet be in
2 the back right shoulder, when he turns around and tries to go
3 to the back? (Indicating.) Does it make any sense at all
4 that he's sitting in the passenger seat when this happens?
5 There's blood there, sure. There's blood all over that van.
6 Looks like a blood bomb exploded in that van. But you
7 remember the testimony of Charlie Pack, of Jason Reeves, even
8 of Dr. Maxwell and Dr. King, about how much blood was coming
9 out of his mouth. Remember Charlie Pack said it was like
10 pouring a drink out of a pitcher, blood was coming out so
11 fast. He's choking on his blood. He's spitting his blood.
12 It's all over that van. Could he have sat in the passenger
13 seat? And if he did, why did he have to turn around to shoot
14 him?

15 According to Mr. Matthews-- And to believe the
16 defense theory and to believe Mr. Matthews -- or to find the
17 defendant not guilty is to believe Mr. Matthews' theory.
18 According to Mr. Matthews, there was another gun that he threw
19 away or he and Rejon threw away, there are all these pictures
20 of little naked Asian kids that were thrown away, and all the
21 proof that showed really the bad guy in all this is Guy Luck
22 has been destroyed. Does that make sense? Does that make
23 sense? Does it make sense that the one gun out of the three
24 that Rejon Taylor would take would be the victim's gun, the
25 one gun that makes him not guilty? Does that make sense? Oh,

1 Mr. Matthews says, "Oh, he thought it was -- Rejon must have
2 thought it was his gun, because it was the same caliber."
3 When they're driving down the road back to Atlanta for an hour
4 and a half or two hours, doesn't he know it's not his? Why
5 throw out the piece of evidence that can acquit you? Why
6 leave two guns, the two guns used to shoot Mr. Luck, in the
7 van, and leave them sitting there in the driver's side wheel
8 well there?

9 Remember, Sir Jack Matthews said, "I got shot. I
10 didn't know what was going on. I got out. I dropped my gun
11 and got out," said he was in the back of the van. So,
12 according to Mr. Matthews, Rejon Taylor got that gun out of
13 the back of the van as well as his gun out of the back of the
14 van, put them down there in the wheel well, picked up Guy
15 Luck's gun, and left. Does that make sense? The glove is
16 caught right there. (Indicating.) There is another glove
17 caught in the seat belt contraption there. Does it make sense
18 that these guys are driving from Atlanta to Chattanooga and
19 they're not doing anything wrong but he's just wearing --
20 Mr. Taylor is just wearing gloves in August? Does that make
21 sense, or does what Mr. Marshall said and what Sir Jack
22 Matthews said for the ten times before that make more sense?
23 And you can look and see what he said before that, compare it
24 with the proof.

25 Joey Marshall tells you that they went -- Sir Jack

1 -- he went up to the house with Sir Jack Matthews, he
2 chickened out, Sir Jack said, "I'll do it myself," and got
3 under the van, and that Joey and Rejon drove around the
4 house -- around the neighborhood, excuse me, until Sir Jack
5 took the victim into the house at gunpoint. How do we know
6 that's true? Melissa Gallant, who doesn't know any of these
7 people, who is just the Neighborhood Watch, and sees a strange
8 car coming down her very steep driveway, took the license
9 plate number and the car down, and said two black males were
10 circling around, driving around in her neighbor. She lives
11 right down from the victim. She supports Joey Marshall's
12 statement.

13 We know Rejon Taylor's in the van, because his
14 bloody print is in the van, in the victim's blood. We know
15 Sir Jack Matthews is in the van, because he's got one of the
16 bullets in his back. All support Joey Marshall. Joey
17 Marshall told you Sir Jack Matthews said, "You bust him. You
18 busted him. You're a soldier," to Rejon Taylor.

19 Rejon doesn't deny it, doesn't say, "No, man, I
20 didn't do it. That was self-defense." None of that.

21 We know Rejon Taylor said, "That's the guy who took
22 warrants out on me in Rockdale County." And we know there is
23 paper work from Rockdale County saying that thieves have been
24 identified.

25 They didn't go there to rob him. There were credit

1 cards there and money, and they didn't take it. I submit
2 that's because Rejon Taylor went there for a different reason.
3 We do know that before Rejon Taylor went to that house, this
4 was Guy Luck, a restaurant owner, engaged, a hard-working man
5 who had two houses so sometimes his mail piled up at one of
6 them. (Indicating.) That's what he looked like after he met
7 Rejon Taylor --

8 MR. CLEMENTS: Your Honor, I object.

9 MR. POOLE: -- shot in the mouth, down through the
10 mouth. (Indicating.)

11 MR. CLEMENTS: This picture has no probative value
12 other than bias and prejudice.

13 MR. POOLE: Your Honor, this picture is in evidence.

14 MR. CLEMENTS: Appeals to sympathy. Doesn't have any
15 probative value, particularly compared to prejudicial value,
16 period.

17 THE COURT: Mr. Poole?

18 MR. POOLE: Your Honor, this photograph has been
19 admitted into evidence, and for having probative value. So I
20 believe I can argue it to the jury, Judge.

21 THE COURT: Overruled.

22 MR. POOLE: That's Mr. Guy Luck after he met
23 Mr. Taylor. (Indicating.) That's the last time Stephanie
24 Belcher saw her husband -- or fiancé, when she came up and
25 identified his dead body, while Rejon Taylor was sitting at Red

1 Lobster spending the victim's money.

2 Rejon Taylor is the one found hiding in the
3 refrigerator. Rejon Taylor is the one who tried to escape
4 from jail.

5 THE CLERK: That's your time.

6 MR. POOLE: Stop it.

7 (Brief pause.)

8 THE COURT: Members of the jury, now that the
9 evidence is in and you have heard the closing arguments of the
10 attorneys, it is time for me to instruct you about the law you
11 must follow in deciding this case. I will start by explaining
12 your duties and the general rules that apply in every criminal
13 case. Then I will explain the elements or parts of the crimes
14 the defendant is accused of committing. Next I will explain
15 some rules you must use in evaluating particular testimony and
16 evidence. And last I will explain the rules you must follow
17 during your deliberations in the jury room and the possible
18 verdicts you may return. Please listen very carefully to
19 everything I say.

20 You have two main duties as jurors. The first one
21 is to decide what the facts are from the evidence you saw and
22 heard here in court. Deciding what the facts are is your job,
23 not mine, and nothing I have said or done during this trial
24 was meant to influence your decision about the facts in any
25 way.

Jury Charge

1 Your second duty is to take the law I give you,
2 apply it to the facts, and decide if the government has proved
3 defendant guilty beyond a reasonable doubt. It is my job to
4 instruct you about the law, and you are bound by the oath you
5 took at the beginning of the trial to follow the instructions
6 I give you, even if you personally disagree with them. This
7 includes the instructions I gave you before and during the
8 trial and these instructions. All the instructions are
9 important, and you should consider them together as a whole.
10 The lawyers have talked about the law during their arguments,
11 but if what they said is different from what I say, you must
12 follow what I say. What I say about the law controls.

13 Perform these duties fairly. Do not let any bias,
14 sympathy, or prejudice that you may feel toward one side or
15 the other influence your decision in any way.

16 As you know, defendant has pleaded not guilty to the
17 crimes charged in the indictment. The indictment is not any
18 evidence at all of guilt. It is just the formal way the
19 government tells a defendant what crime he is accused of
20 committing. It does not raise any suspicion of guilt.

21 Instead, defendant starts the trial with a clean
22 slate, with no evidence at all against him, and the law
23 presumes he is innocent. The presumption of innocence alone
24 is sufficient to find defendant not guilty. This presumption
25 of innocence stays with defendant unless the government

Jury Charge

1 presents evidence here in court that overcomes the presumption
2 and convinces you beyond a reasonable doubt defendant is
3 guilty. This means defendant has no obligation to present any
4 evidence at all or to prove to you in any way that he is
5 innocent. It is up to the government to prove defendant is
6 guilty, and this burden stays on the government from start to
7 finish.

8 You must find defendant not guilty unless the
9 defendant convinces you beyond a reasonable doubt that
10 defendant is guilty. The burden never shifts to defendant,
11 for the law never imposes on a defendant in a criminal case
12 the burden or duty of calling any witnesses or producing any
13 evidence. A defendant is not obligated to produce any
14 evidence, either by cross-examining the witnesses who were
15 called to testify or by-- A defendant is not obligated to
16 produce any evidence, either by cross-examining witnesses who
17 are called to testify by the prosecution or by testifying on
18 his own behalf.

19 The government must prove every element of the
20 crimes charged beyond a reasonable doubt. Proof beyond a
21 reasonable doubt does not mean proof beyond all possible
22 doubt. Possible doubts or doubts based purely on speculation
23 are not reasonable doubts. A reasonable doubt is a doubt
24 based on reason and common sense. It may arise from the
25 evidence, the lack of evidence, or the nature of the evidence.

Jury Charge

1 Proof beyond a reasonable doubt means proof which is so
2 convincing that you would not hesitate to rely and act on it
3 in making the most important decisions in your own lives. If
4 you are convinced the government has proved defendant guilty
5 beyond a reasonable doubt, say so by returning a guilty
6 verdict. If you are not convinced, say so by returning a not
7 guilty verdict.

8 You must make your decision based only on the
9 evidence you saw and heard here in court. Do not let rumors,
10 suspicions, or anything else you may have seen or heard
11 outside of court influence your decision in any way. The
12 evidence in this case includes only what the witnesses said
13 while they were testifying under oath and the exhibits that I
14 allowed into evidence and the stipulations of the parties.
15 Nothing else is evidence. The lawyers' statements and
16 arguments are not evidence. Their questions and objections
17 are not evidence. My legal rulings are not evidence. And my
18 comments and questions are not evidence. Make your decisions
19 based only on the evidence, as I have defined it here, and
20 nothing else.

21 You should use your common sense in weighing the
22 evidence. Consider it in light of your everyday experience
23 with people and events, and give it whatever weight you
24 believe it deserves. If your experience tells you certain
25 evidence reasonably leads to a conclusion, you are free to

1 reach that conclusion.

2 Now, some of you may have heard the terms direct
3 evidence and circumstantial evidence. Direct evidence is
4 simply evidence like the testimony of an eyewitness which, if
5 you believe it, directly proves a fact. If a witness
6 testified he saw it raining outside, and you believed him,
7 that would be direct evidence it was raining.

8 Circumstantial evidence is simply a chain of
9 circumstances that indirectly proves a fact. If someone
10 walked into the courtroom wearing a raincoat covered with
11 drops of water and carrying a wet umbrella, that would be
12 circumstantial evidence from which you could conclude it was
13 raining.

14 It is your job to decide how much weight to give the
15 direct and circumstantial evidence. The law makes no
16 distinction between the weight you should give to either one
17 nor does it say that one is any better evidence than the
18 other. You should consider all the evidence, both direct and
19 circumstantial, and give it whatever weight you believe it
20 deserves.

21 As I told you at the beginning of the trial, an
22 important part of your job as jurors is to decide how credible
23 or believable each witness was. This is your job, not mine.
24 It is up to you to decide if a witness's testimony was
25 believable and how much weight you think it deserves. You are

Jury Charge

1 free to believe everything a witness said, or only part of it,
2 or none of it at all, but you should act reasonably and
3 carefully in making these decisions.

4 Let me suggest some things for you to consider in
5 evaluating each witness's testimony. Ask yourself if the
6 witness was able to clearly see or hear the events. Sometimes
7 even an honest witness may not have been able to see or hear
8 what was happening and may make a mistake.

9 Ask yourself how good the witness's memory seemed to
10 be. Did the witness seem able to accurately remember what
11 happened? Ask yourself if there was anything else that may
12 have interfered with the witness's ability to perceive or
13 remember the events.

14 Ask yourself how the witness acted while testifying.
15 Did the witness appear honest, or did the witness appear to be
16 lying?

17 Ask yourself if the witness had any relationship to
18 the government or to the defendant or anything to gain or lose
19 from the case which might influence the witness's testimony.
20 Ask yourself if the witness had any bias or prejudice or
21 reason for testifying that might cause the witness to lie or
22 to slant the testimony in favor of one side or the other.

23 And ask yourself how believable the witness's
24 testimony was in light of all the other evidence. Was the
25 witness's testimony supported, or contradicted, by other

Jury Charge

1 evidence that you found believable? If you believe that a
2 witness's testimony was contradicted by other evidence,
3 remember that people sometimes forget things and that even two
4 honest people who witness the same event may not describe it
5 exactly the same way.

6 These are only some of the things you may consider
7 in deciding how believable each witness was. You may also
8 consider other things that you think shed some light on the
9 witness's believability. Use your common sense and your
10 everyday experience in dealing with other people, and then
11 decide what testimony you believe and how much weight you
12 think it deserves.

13 You have heard that certain witnesses made
14 statements on earlier occasions which counsel argue are
15 inconsistent with those witnesses' trial testimony. Evidence
16 of a prior inconsistent statement is not to be considered by
17 you as affirmative evidence bearing on the defendant's guilt
18 or innocence, because this evidence was placed before you for
19 the limited purpose of helping you decide whether to believe
20 the trial testimony of the witness who contradicted himself.
21 If you find that a witness made an earlier statement that is
22 inconsistent with his or her trial testimony, you may consider
23 that fact in deciding how much of his trial testimony, if any,
24 to believe. In making this determination, you may consider
25 whether the witness purposely made a false statement or

Jury Charge

1 whether it was an innocent mistake, whether the inconsistency
2 concerns an important fact or whether it had to do with a
3 small detail, whether the witness had an explanation for the
4 inconsistency and whether that explanation appealed to your
5 common sense. It is exclusively your duty, based upon all the
6 evidence and your own good judgment, to determine whether the
7 prior statement was inconsistent and, if so, how much, if any,
8 weight should be given to the inconsistent statement in
9 determining whether to believe all or part of a witness's
10 testimony.

11 You have also heard that Joey Marshall and Sir Jack
12 Matthews may have been involved in the same crime which
13 defendant is charged with committing. You should consider the
14 testimony of these witnesses with more caution than the
15 testimony of other witnesses. The fact that Joey Marshall and
16 Sir Jack Matthews have confessed to a crime is not evidence
17 that defendant is guilty, and you cannot consider this against
18 defendant in any way.

19 You have also heard that Joey Marshall, Sir Jack
20 Matthews, and Steven Szabo may hope for a reduction in their
21 sentences based on them giving substantial assistance to the
22 government in its investigation of federal crimes. The law
23 provides that if a criminal defendant in federal court
24 provides substantial assistance in the investigation or
25 prosecution of other persons, the government may file a motion

Jury Charge

1 with the Court asking the Court to sentence that defendant to
2 a reduced term of incarceration. If such a motion is filed by
3 the government, it is up to the Judge to decide whether to
4 reduce the sentence at all and, if so, by how much to reduce
5 it. Do not convict the defendant based on the unsupported
6 testimony of such a witness, standing alone, unless you
7 believe his testimony beyond a reasonable doubt. You may give
8 the testimony of such witness as much weight as you think the
9 testimony deserves. Whether or not the testimony of such
10 witness may have been influenced by the hope of receiving a
11 reduced sentence or by receiving such a benefit is for you to
12 decide.

13 One more point about the witnesses. Sometimes
14 jurors wonder if the number of witnesses who testified makes
15 any difference. Do not make any decision based only on the
16 number of witnesses who testified. What is more important is
17 how believable the witnesses were and how much weight you
18 think their testimony deserves. Concentrate on that, not the
19 numbers.

20 You have heard evidence of acts of the defendant
21 relating to alleged thefts, burglaries, and other acts other
22 than those charged in the indictment. If you find the
23 defendant did those acts, you can consider the evidence only
24 as it relates to the government's claim on the defendant's
25 motive, lack of mistake, intent, or consciousness of guilt.

Jury Charge

1 You must not consider it for any other purpose. Remember that
2 defendant is on trial here only for the crimes alleged in the
3 indictment, not for the other acts. Do not return a guilty
4 verdict unless the government proves the crimes charged in the
5 indictment beyond a reasonable doubt.

6 The defendant has been charged with four separate
7 offenses. The number of crimes charged is not evidence of
8 guilt, and this should not influence your decision in any way.
9 It is your duty to separately consider the evidence that
10 relates to each charge and to return a separate verdict for
11 each one. For each charge you must decide whether the
12 government has presented proof beyond a reasonable doubt that
13 the defendant is guilty of that particular charge. Your
14 decision on one charge, whether it is guilty or not guilty,
15 should not influence your decision on the other charges.

16 The evidence also includes stipulations agreed to by
17 the parties. When the attorneys on both sides stipulate or
18 agree to the existence of a fact, you should accept the
19 stipulation as evidence and regard the fact as proved. You
20 are not required to do so, however, since you are the sole
21 judges of the facts.

22 A defendant has an absolute right not to testify.
23 The fact that defendant did not testify cannot be considered
24 by you in any way. Do not even discuss it in your
25 deliberations. Remember that it is up to the government to

1 prove defendant guilty beyond a reasonable doubt. It is not
2 up to defendant to prove that he is innocent.

3 You have heard the opinion testimony of several
4 witnesses. A witness may offer an opinion if they have
5 special knowledge or experience which may be helpful to the
6 jury. You do not have to accept their opinions. In deciding
7 how much weight to give them, you should consider the
8 witnesses' qualifications and how the witnesses reached their
9 conclusions as well as any other factors you think are
10 relevant to determining whether their opinions are credible.
11 Remember that you alone decide how much of a witness's
12 testimony to believe and how much weight it deserves.

13 There is one more general subject I want to talk to
14 you about before I begin explaining the elements of the crimes
15 charged. The lawyers for both sides objected to some of the
16 things that were said or done during the trial. Do not hold
17 this against either side. The lawyers have a duty to object
18 whenever they think something is not permitted by the rules of
19 evidence. Those rules are designed to make sure both sides
20 receive a fair trial. And do not interpret my rulings on
21 their objections as any indication of how I think the case
22 should be decided. My rulings were based on the rules of
23 evidence, not on how I feel about the case. Remember, your
24 decision must be based only on the evidence you saw and heard
25 here in court.

Jury Charge

1 That concludes the part of my instructions
2 explaining your duties and the general rules that apply in
3 every criminal case. In a moment I will explain the elements
4 of the crimes defendant is accused of committing. But before
5 I do that, I want to emphasize that defendant is only on trial
6 for the particular crimes charged in the indictment. Your job
7 is limited to deciding whether the government has proved the
8 particular crimes charged.

9 Also keep in mind that whether anyone else was, or
10 should be, prosecuted and convicted for this crime is not a
11 matter for you to consider. You should not be concerned with
12 the guilt of any other person or persons not on trial as
13 defendants in this case.

14 I'll explain the definition of several terms
15 frequently used in federal criminal law and then explain the
16 elements which the government must prove in this case.

17 Count 1 of the indictment charges defendant with
18 carjacking resulting in death. A person is guilty of
19 carjacking if he, with intent to cause death or serious bodily
20 harm, takes a motor vehicle that has been transported,
21 shipped, or received in interstate commerce from the person of
22 another by force and violence or by intimidation.

23 For you to find defendant guilty of the offense
24 charged in Count 1, the government must prove each of the
25 following elements beyond a reasonable doubt: First,

Jury Charge

1 defendant took and caused to be taken a motor vehicle from the
2 person or presence of another; second, defendant did so by the
3 use of force, violence, or intimidation; third, the motor
4 vehicle had previously -- third, the motor vehicle had
5 previously crossed state lines; fourth, while taking or
6 attempting to take the motor vehicle, defendant intended to
7 cause the death of or cause serious bodily harm to that
8 person; and, fifth, in committing the offense, defendant
9 caused the death of Guy Luck.

10 I will now explain some of the terms I just used.
11 The first element requires a motor vehicle be taken from the
12 person or presence of another. To take a motor vehicle means
13 to acquire possession or control of the vehicle for a period
14 of time. The government does not have to prove that the
15 defendant intended to permanently deprive the owner of
16 possession of the vehicle. Also, the government does not have
17 to prove that the victim was forced to leave the vehicle, as
18 long as it proves that the defendant had control over the
19 situation.

20 The second element requires the use of force,
21 violence, or intimidation. The term by force and violence
22 means by use of actual physical strength or actual physical
23 violence. The term by intimidation means the commission of
24 some act or the making of some statement that would put a
25 reasonable person of ordinary sensibilities in fear of bodily

Jury Charge

1 harm. It is not necessary for the government to prove that
2 the alleged victim was actually placed in fear.

3 The third element requires the motor vehicle to have
4 previously crossed state lines. The parties have stipulated
5 or agreed that the vehicle was previously transported,
6 shipped, and received in interstate commerce.

7 The fourth element requires defendant to have
8 intended to cause death or serious bodily harm. Whether
9 defendant intended to cause death or serious bodily harm is to
10 be judged objectively from the conduct of defendant as
11 disclosed by the evidence and from what one in the position of
12 the alleged victim might reasonably conclude. In this case
13 the government contends that the defendant intended to cause
14 death or serious bodily harm if the alleged victim had refused
15 to turn over the car. If you find beyond a reasonable doubt
16 that the defendant had such an intent, the government has
17 satisfied this element of the offense.

18 The fifth element requires that in committing the
19 carjacking defendant did cause the death of Guy Luck.

20 If you are convinced the government has proved all
21 of these elements, say so by returning a guilty verdict on
22 Count 1. If you have a reasonable doubt about any one of
23 these elements, then you must find the defendant not guilty on
24 Count 1.

25 Count 2 of the indictment charges defendant with

Jury Charge

1 murder by use of a firearm during and in relation to
2 carjacking. Federal law prohibits the use, carry, and
3 discharge of a firearm during and in relation to a crime of
4 violence. A person is guilty of this offense if he, in the
5 course of committing a crime of violence, murders a person
6 through the use of a firearm.

7 For you to find defendant guilty of the offense
8 charged in Count 2, the government must prove each of the
9 following elements beyond a reasonable doubt: First,
10 defendant committed the carjacking charged in Count 1; second,
11 defendant knowingly used, carried, or discharged a firearm;
12 third, the use, carrying, or discharge of the firearm occurred
13 during and in relation to the carjacking charged in Count 1;
14 and, fourth, in committing the offense, defendant murdered Guy
15 Luck through the use of a firearm.

16 The first element of this offense requires defendant
17 have committed the carjacking charged in Count 1. If you find
18 the defendant guilty on Count 1, you will then consider
19 whether the government has proved each of the remaining
20 elements of this Count 2 offense beyond a reasonable doubt.
21 If you find defendant not guilty on Count 1, then you must
22 also find defendant not guilty on Count 2.

23 The second and third elements involve the use,
24 carrying, or discharge of a firearm. To establish use, the
25 government must prove active employment of the firearm during

Jury Charge

1 and in relation to the crime charged in Count 1. Active
2 employment means activities such as brandishing, displaying,
3 bartering, striking with, and, most obviously, firing or
4 attempting to fire-- Active employment means activities such
5 as brandishing, displaying, bartering, striking with, and,
6 most obviously, firing, or attempting to fire, a firearm. Use
7 also includes a person's reference to a firearm in his
8 possession for the purpose of helping to commit the crime
9 charged in Count 1. Use requires more than mere possession or
10 storage.

11 Discharge means firing a firearm, causing it to
12 expel a bullet.

13 The term firearm means any weapon which will, or is
14 designed to, or may readily be converted to, expel a
15 projectile by the action of an explosive.

16 The term during and in relation to means the firearm
17 must have some purpose or effect with respect to the crime
18 charged in Count 1; in other words, the firearm must
19 facilitate or further, or have the potential of facilitating
20 or furthering, the crime charged in Count 1, and its presence
21 or involvement cannot be the result of accident or
22 coincidence.

23 The fourth element requires the government to prove
24 the death of Guy Luck was a murder in the first degree. This
25 requires the government to prove these additional elements

Jury Charge

1 beyond a reasonable doubt: First, the defendant unlawfully
2 killed Guy Luck; second, defendant committed the killing with
3 malice aforethought; third, the killing was committed either
4 during the perpetration of a kidnapping or was willful,
5 deliberate, malicious, and premeditated.

6 Thus, there are two ways the government can prove
7 defendant guilty of Count 2. The government does not need to
8 prove both of these ways beyond a reasonable doubt. However,
9 to return a guilty verdict, all 12 of you must unanimously
10 agree that the same way has been proven beyond a reasonable
11 doubt.

12 Regarding the second of the additional elements, to
13 kill with malice aforethought means an intent, at the time of
14 the killing, to take the life of another person either
15 deliberately and intentionally or to willfully act with
16 callous and wanton disregard for human life.

17 The government need not prove that defendant hated
18 the person killed or felt ill will toward the victim at the
19 time, but the evidence must establish beyond a reasonable
20 doubt that defendant acted either with the intent to kill or
21 to willfully do acts with callous and wanton disregard for the
22 consequences and which defendant knew would result in a
23 serious risk of death or serious bodily harm.

24 Regarding the third of the additional elements, in
25 perpetration of kidnapping, means that defendant killed Guy

Jury Charge

1 Luck while the defendant was committing the kidnapping charged
2 in Count 3 of the indictment and in furtherance of that
3 kidnapping.

4 Premeditation is typically associated with killing
5 in cold blood, and requires a period of time in which the
6 accused deliberates or thinks the matter over before acting.
7 The law does not specify or require any exact period of time
8 that must pass between the formation of the intent to kill and
9 the killing itself. It must be long enough for the killer,
10 after forming the intent to kill, to be fully conscious of
11 that intent.

12 If you are convinced that the government has proved
13 all of these elements, say so by returning a guilty verdict on
14 Count 2. If you have a reasonable doubt about any one of
15 these elements, then you must find the defendant not guilty on
16 Count 2.

17 If you find defendant not guilty on Count 2, then
18 you should proceed to determine whether defendant is guilty of
19 the lesser included offense of second-degree murder by use of
20 a firearm during and in relation to carjacking. This offense
21 requires the government to prove the same elements as
22 previously described for Count 2. The only difference is that
23 you do not have to find that defendant is guilty beyond a
24 reasonable doubt of murdering Guy Luck deliberately,
25 maliciously, willfully, and with premeditation, nor do you

Jury Charge

1 have to find that defendant is guilty beyond a reasonable
2 doubt of murdering Guy Luck during the perpetration of the
3 kidnapping charged in Count 3. If you are convinced the
4 government has proved all of the elements of second-degree
5 murder by use of a firearm during and in relation to
6 carjacking, say so by returning a guilty verdict on that
7 charge. If you have a reasonable doubt about any one of these
8 elements, then you must find the defendant not guilty on that
9 charge.

10 If you find the defendant not guilty on Count 2 of
11 both first- and second-degree murder, then you should proceed
12 to determine whether the defendant is guilty of the lesser
13 included offense of voluntary manslaughter by use of a firearm
14 during and in relation to carjacking. Manslaughter is the
15 unlawful killing of a human being without malice. This
16 offense requires the government to prove the same elements as
17 previously described for Count 2; specifically, defendant
18 committed the carjacking charged in Count 1; defendant used,
19 carried, or discharged a firearm; the use, carrying, or
20 discharge of the firearm occurred during and in relation to
21 the carjacking charged on Count 1; in committing the offense,
22 the defendant caused the death of Guy Luck through the use of
23 a firearm.

24 For voluntary manslaughter the description of the
25 elements are the same as I previously described, except for

Jury Charge

1 the fourth element. For the fourth element you do not have to
2 find that defendant is guilty beyond a reasonable doubt of
3 murdering Guy Luck deliberately, maliciously, willfully, and
4 with premeditation, and you do not have to find that defendant
5 is guilty beyond a reasonable doubt of murdering Guy Luck
6 during the perpetration of the kidnapping charged in Count 3,
7 and you do not have to find defendant is guilty beyond a
8 reasonable doubt of killing Guy Luck with malice aforethought.
9 Instead, the fourth element requires the additional elements
10 defendant unlawfully killed Guy Luck while in a sudden quarrel
11 or heat of passion caused by adequate provocation, either
12 defendant intentionally killed Guy Luck or defendant killed
13 Guy Luck recklessly with extreme disregard for human life.
14 Heat of passion may be provoked by fear, rage, or terror.
15 Provocation, in order to be adequate, must be such as might
16 naturally cause a reasonable person, in the passion of the
17 moment, to lose self-control and act on impulse and without
18 reflection.

19 If you are convinced that the government has proved
20 the elements of this charge, say so by returning a guilty
21 verdict on the lesser offense of voluntary manslaughter by use
22 of a firearm during and in relation to carjacking. If you
23 have a reasonable doubt about any one of these elements, then
24 you must find the defendant not guilty on this charge.

25 Count 3 of the indictment accuses defendant of

Jury Charge

1 kidnapping causing death. A person is guilty of kidnapping
2 when he unlawfully seizes, confines, kidnaps, abducts, or
3 carries away and holds for ransom or reward or otherwise any
4 person when the person is willfully transported in interstate
5 commerce.

6 For you to find defendant guilty of the offense
7 charged in Count 3, the government must prove each of the
8 following elements beyond a reasonable doubt: Defendant
9 knowingly and willfully seized, confined, kidnapped, abducted,
10 or carried away the person named in the indictment, Guy Luck;
11 that person was thereafter transported in interstate commerce
12 while so seized, confined, kidnapped, or abducted; defendant
13 held that person for ransom, reward, or other reason; and, in
14 committing the offense, defendant caused the death of Guy
15 Luck.

16 With regard to the first element, to kidnap a person
17 means to forcibly and unlawfully hold, keep, detain, and
18 confine the person against his will. So involuntariness or
19 coercion in connection with the victim's detention is an
20 essential part of the offense. A person acts knowingly if he
21 acts intentionally, voluntarily, and with an awareness of his
22 actions, and not because of ignorance, accident, mistake, or
23 carelessness. Whether defendant acted knowingly may be proven
24 by defendant's conduct and by all the facts and circumstances
25 surrounding the case.

Jury Charge

1 Willfully means acting knowingly, purposefully, and
2 deliberately with an intent to do something the law forbids,
3 that is to say, with the bad purpose to disobey or to
4 disregard the law. A defendant's conduct was not willful if
5 it was due to negligence, inadvertence, or mistake.

6 The second element requires the person be
7 transported in interstate commerce. Interstate commerce means
8 commerce or travel between one state and another state. A
9 person is transported in interstate commerce whenever that
10 person moves across state lines from one state into another
11 state. The government does not have to prove that defendant
12 knew of the crossing of state lines or that defendant intended
13 to cross state lines but only that it was done while the
14 defendant was intentionally transporting the victim.

15 The third element requires the government to prove
16 defendant held the person for ransom, reward, or other reason.
17 It need not be proved that a kidnapping was carried out for
18 ransom or personal monetary gain so long as it is proved that
19 defendant acted willfully, intending to gain some benefit from
20 the kidnapping.

21 The fourth element requires that in committing the
22 kidnapping defendant did cause the death of Guy Luck. If you
23 are convinced that the government has proved all of these
24 elements, say so by returning a guilty verdict on Count 3.

25 If you have a reasonable doubt about any one of

Jury Charge

1 these elements, then you must find the defendant not guilty on
2 Count 3.

3 Count 4 of the indictment charges the defendant with
4 murder by use of a firearm during and in relation to
5 kidnapping. Federal law prohibits the use, carry, and
6 discharge of a firearm during and in relation to a crime of
7 violence. A person is guilty of this offense if he, in the
8 course of committing a crime of violence, murders a person
9 through the use of a firearm.

10 For you to find defendant guilty of the offense
11 charged in Count 4, the government must prove each of the
12 following elements beyond a reasonable doubt: First,
13 defendant committed the kidnapping charged in Count 3; second,
14 defendant knowingly used, carried, or discharged a firearm;
15 third, the use, carrying, or discharge of the firearm occurred
16 during and in relation to the kidnapping charged in Count 3;
17 and, fourth, in committing the offense, defendant murdered Guy
18 Luck through the use of a firearm.

19 The descriptions of these elements that I have
20 provided with regard to Count 2 are the same for Count 4,
21 including the additional requirements of proving the killing
22 was a murder in the first degree. If you are convinced that
23 the government has proved all of these elements, say so by
24 returning a guilty verdict on Count 4. If you have a
25 reasonable doubt about any one of these elements, then you

Jury Charge

1 must find the defendant not guilty on Count 4.

2 If you find defendant not guilty on Count 4, then
3 you should proceed to determine whether defendant is guilty of
4 the lesser included offense of voluntary manslaughter by use
5 of a firearm during and in relation to kidnapping.

6 Manslaughter is the unlawful killing of a human being without
7 malice. This offense requires the government to prove the
8 same elements as previously described for Count 4;
9 specifically, defendant committed the kidnapping charged in
10 Count 3; defendant used, carried, or discharged a firearm; the
11 use, carrying, or discharge of the firearm occurred during and
12 in relation to the kidnapping charged in Count 3; and, in
13 committing the offense, defendant caused the death of Guy Luck
14 through the use of a firearm.

15 For voluntary manslaughter the descriptions of the
16 elements are the same as I have previously described, except
17 for the fourth element. For the fourth element, you do not
18 have to find that defendant is guilty beyond a reasonable
19 doubt of murdering Guy Luck deliberately, maliciously,
20 willfully, and with premeditation, and you do not have to find
21 defendant is guilty beyond a reasonable doubt of killing Guy
22 Luck with malice aforethought. Instead, the fourth element
23 requires these additional elements: First, defendant
24 unlawfully killed Guy Luck; and, second, while in a sudden
25 quarrel or heat of passion caused by adequate provocation

Jury Charge

1 either defendant intentionally killed Guy Luck or defendant
2 killed Guy Luck recklessly with extreme disregard for human
3 life.

4 If you are convinced that the government has proved
5 the elements of this charge, say so by returning a guilty
6 verdict on the lesser offense of voluntary manslaughter by use
7 of a firearm during and in relation to kidnapping. If you
8 have a reasonable doubt about any one of these elements, then
9 you must find the defendant not guilty on this charge.

10 Next I want to explain something about proving a
11 defendant's state of mind. Ordinarily there is no way that a
12 defendant's state of mind can be proved directly because no
13 one can read what is in another person's mind and tell what
14 that person is thinking. But a defendant's state of mind can
15 be proved indirectly from the surrounding circumstances. This
16 includes things like what the defendant said, what the
17 defendant did, how the defendant acted, and any other facts or
18 circumstances in evidence that show what was in the
19 defendant's mind. You may also consider the natural and
20 probable results of any acts that defendant knowingly did, and
21 whether it is reasonable to conclude that defendant intended
22 those results. This, of course, is all for you to decide.

23 For you to find the defendant guilty, it is not
24 necessary for you to find that he personally committed the
25 crime himself. You may also find him guilty if he

Jury Charge

1 intentionally helped or encouraged someone else to commit the
2 crime. A person who does this is called an aider and abettor.
3 But for you to find the defendant guilty of any crimes as an
4 aider and abettor, you must be convinced the government has
5 proved each and every one of the following elements beyond a
6 reasonable doubt: First, that the crime was committed;
7 second, that the defendant helped to commit the crime or
8 encouraged someone else to commit the crime; and, third, that
9 the defendant intended to help commit or encourage the crime.

10 Proof that the defendant may have known about the
11 crime, even if he was there when it was committed, is not
12 enough for you to find him guilty. You can consider such
13 proof in deciding whether the government has proved that he
14 was an aider and abettor, but without more it is not enough.
15 What the government must prove is that the defendant did
16 something to help or encourage the crime with the intent that
17 the crime be committed. If you are convinced that the
18 government has proved all of these elements, you can return a
19 guilty verdict based on an aiding and abetting theory. If you
20 have a reasonable doubt about any one of these elements, then
21 you cannot find the defendant guilty of those crimes as an
22 aider and abettor.

23 You have heard evidence that after the August 6,
24 2003, crime was supposed to have been committed, defendant may
25 have been involved in the destruction or concealment of

Jury Charge

1 evidence, taken evasive action to avoid being arrested, and
2 later may have been involved in an attempt to escape from
3 jail. The burden is upon the government to prove intentional
4 flight. Intentional flight after a defendant is accused of a
5 crime is not, alone, sufficient to conclude that he is guilty.
6 Flight does not create a presumption of guilt. If you believe
7 that defendant destroyed or concealed evidence, took evasive
8 action to avoid being arrested, and was involved in an attempt
9 to escape from jail, you may consider this conduct, along with
10 all the other evidence, in deciding whether the government has
11 proved beyond a reasonable doubt that he committed the crimes
12 charged. This conduct may indicate that he thought he was
13 guilty and was trying to avoid punishment. On the other hand,
14 sometimes an innocent person may do these actions for some
15 other innocent reason. It is up to you as members of the jury
16 to determine whether or not such evidence shows a
17 consciousness of guilt and the weight or significance to be
18 attached to any such evidence.

19 That concludes the part of my instructions
20 explaining the rules for considering the testimony and
21 evidence. Now let me finish up by explaining some things
22 about your deliberations in the jury room and your possible
23 verdicts.

24 The first thing you should do in the jury room is
25 choose someone to be your foreperson. This person will help

Jury Charge

1 to guide your discussions and will speak for you here in
2 court.

3 Once you start deliberating, do not talk to
4 Ms. Palmer or to me or to anyone else except each other about
5 the case. If you have any questions or messages, you must
6 write them down on a piece of paper, sign the paper, and then
7 give it to Ms. Palmer. Ms. Palmer will give the questions to
8 me, and I will respond as soon as I can. I may have to talk
9 to the lawyers about what you have asked, so it may take me
10 some time to get back to you. Any questions or messages
11 normally should be sent to me through your foreperson.

12 One more thing about messages. Do not ever write
13 down or tell anyone outside the jury room how you stand on
14 your votes. For example, do not write down or tell anyone
15 except your fellow jurors what your vote happens to be. That
16 must stay secret until you are finished.

17 Your verdict, whether it is guilty or not guilty,
18 must be unanimous. To find defendant guilty, every one of you
19 must agree the government has overcome the presumption of
20 innocence with evidence that proves defendant's guilt beyond a
21 reasonable doubt. To find defendant not guilty, every one of
22 you must agree the government has failed to convince you
23 beyond a reasonable doubt. Either way, guilty or not guilty,
24 your verdict must be unanimous.

25 I have now concluded the instructions relevant to

Jury Charge

1 the specific charges in this case. Before closing, I must add
2 several final notes concerning your deliberations. First, at
3 this stage in the proceedings the question of possible
4 punishment of the defendant must be of no concern to the jury
5 and should not in any sense enter into or influence your
6 deliberations. As you know from jury selection, defendant
7 faces the possibility of the death penalty in this case. But
8 at this stage in the case your only concern should be whether
9 the government has satisfied its burden of proving the
10 defendant's guilt in regard to the charged crimes. The fact
11 that a guilty verdict could lead to a particular punishment
12 should not influence your decision at all during this stage of
13 the case.

14 Now that all the evidence is in and the arguments
15 are completed, you are free to talk about the case in the jury
16 room. In fact, it is your duty to talk with each other about
17 the evidence and to make every reasonable effort you can to
18 reach unanimous agreement. Talk with each other, listen
19 carefully and respectfully to each other's views, and keep an
20 open mind as you listen to what your fellow jurors have to
21 say. Try your best to work out your differences. Do not
22 hesitate to change your mind if you are convinced other jurors
23 are right and that your original position was wrong. But do
24 not ever change your mind just because other jurors see things
25 differently or just to get the case over with. In the end,

Jury Charge

1 your vote must be exactly that—your own vote. It is
2 important for you to reach unanimous agreement but only if you
3 can do so honestly and in good conscience.

4 No one will be allowed to hear your discussions in
5 the jury room, and no record will be made of what you say. So
6 you should all feel free to speak your minds. Listen
7 carefully to what the other jurors have to say, and then
8 decide for yourself if the government has proved defendant
9 guilty beyond a reasonable doubt.

10 I have prepared a verdict form for you to use to
11 record your verdict. The form, I think, is self-explanatory,
12 and you will have no difficulty with it as you go through it.
13 There is one question that pertains to each of the charges.
14 So the first one, for example, which relates to Charge 1,
15 reads, "We, the jury, find defendant," then there is a blank,
16 and then by the blank, in parentheses, in bold print, is the
17 one word is, and then there is a slash and the two words is
18 not, "guilty of the offense charged in Count 1 of the
19 indictment, carjacking resulting in death."

20 Question Number 2 says the same thing, it just
21 applies to Count 2; Question 3, Count 3; Question 4, Count 4.

22 Now, because I instructed you that there are some
23 lesser included offenses with respect to Counts 2 and 4, there
24 are also some additional questions that you will have to
25 answer, 2.A, 2.B.1, 2.B.2, and under 4, 4.A and 4.B. And

1 there are some instructions in bold print between questions 2
2 and 2.A and 4 and 4.B that tells you when and whether you need
3 to answer the questions. As I said, I think you will find
4 this self-explanatory and you will not have any difficulty
5 with it once you see it.

6 Once the jury has concluded its deliberations and
7 has come to a unanimous decision, then the foreperson should
8 complete the instruction by putting in the appropriate words
9 in the questions, that is, is or is not, and then checking the
10 appropriate other questions. And then the foreperson should
11 sign the verdict form at the place for the foreperson's
12 signature, and then put the date the decision was reached,
13 then let Ms. Palmer know that the jury has reached a decision.
14 And Ms. Palmer will inform me, and we'll have you brought
15 back.

16 That concludes the Court's instructions. At this
17 time the Court will order the jury to return to the jury
18 deliberation room. Do not begin deliberating, though, until
19 the Court tells you to do so. The jury should step out of the
20 courtroom.

21 (The jury exited the courtroom, and the proceedings
22 continued as follows:)

23 THE COURT: Please be seated.

24 The jury has departed the courtroom. Does the
25 government have any objection to the charge the Court just

1 gave?

2 MR. NEFF: No, Your Honor.

3 THE COURT: Does the defense have any objection to
4 the charge the Court just gave?

5 MS. CORY: Your Honor, we have none other than the
6 ones we had initially made during the charge conference.

7 THE COURT: It's almost lunchtime. I would suggest
8 that we let the jury take lunch and then begin deliberating
9 when they return.

10 We have six alternates in the case, and I would also
11 propose that either now or when they come back to begin
12 deliberating, that they be separated from the first 12, and
13 that Ms. Palmer place them someplace in the courtroom --
14 courthouse where they're not exposed to outsiders. I don't
15 think I have a preference as to whether we do it now or we do
16 it after lunch.

17 MR. WILLIAM ORTWEIN: That's fine with the defense,
18 Your Honor.

19 MR. NEFF: No preference, Judge. Whenever the Court
20 wants to, that's fine.

21 THE COURT: Okay. Ms. Palmer, why don't you bring
22 the alternates out, then.

23 (Brief pause.)

24 THE COURT: I would ask counsel to get together with
25 Ms. Palmer to make sure that all of the exhibits that were

1 introduced for the jury's benefit are assembled, and make sure
2 that nothing that was not for the jury's benefit goes in. I
3 believe there was at least one, if not two, appellate exhibits
4 that were offered, I think maybe an offer of proof and perhaps
5 something else that was offered that was not for the jury's
6 benefit.

7 MR. WILLIAM ORTWEIN: Yes, sir. In fact, I think I
8 initially introduced a copy of the newspaper, just for the
9 purpose -- not for the purpose of going to the jury. So if I
10 might suggest, Your Honor, it might be advisable if someone
11 from the prosecution team and the defense team look through the
12 exhibits that are up there before they're reviewed further.

13 THE COURT: I think that's an excellent suggestion.
14 I would ask that each side do that and just make sure that only
15 those exhibits that were intended for the jury go back.

16 (Brief pause.)

17 MR. WILLIAM ORTWEIN: While we're waiting, Your
18 Honor, could I ask another question relative to location of the
19 attorneys while the jury is deliberating? Of course Mr. Lee
20 Ortwein's office is five minutes from here. Whatever the Court
21 desires. I was wondering, though, if it would be possible—we
22 could obviously leave a phone number with a clerk—for us to
23 adjourn to there during deliberations.

24 THE COURT: Mr. Neff?

25 MR. NEFF: That would be fine with the government,

1 Your Honor.

2 THE COURT: Okay. Five minutes? So --

3 MR. WILLIAM ORTWEIN: Well, Judge, maybe I ought to
4 say ten.

5 MR. LEE ORTWEIN: It's five minutes by his time.
6 It's a block by my time, about two minutes.

7 MR. WILLIAM ORTWEIN: For younger people to get here,
8 not for we older folks, necessarily. Your Honor, it's right
9 here at Park Plaza Building on the corner of Georgia and--
10 What's that street?

11 MR. LEE ORTWEIN: 10th and Market.

12 MR. WILLIAM ORTWEIN: 10th, coming out the back door.

13 MR. NEFF: Mr. Clements claimed he could run a 4.2
14 40, Judge, during voir dire. So I'm sure he could get here
15 fast.

16 THE COURT: Just make sure that Ms. Palmer, then, has
17 a way to get in touch with you. I would suggest you leave your
18 cell phone numbers instead of your office -- or in addition to
19 your office numbers.

20 MR. WILLIAM ORTWEIN: Thank you, Your Honor.

21 THE COURT: I think they're taking advantage of the
22 break, so they're in the rest rooms and getting their coffee.
23 In fact, I think it probably makes sense to have them all
24 brought in, instead of just the alternates, and we can release
25 them for lunch.

1 Ms. Palmer, why don't you bring them all back out.

2 THE CLERK: All of them? Okay.

3 (Brief pause.)

4 (The jury entered the courtroom, and the proceedings
5 continued as follows:)

6 THE COURT: Please be seated.

7 Ladies and gentlemen, it's about noontime now, so I
8 think it's appropriate that I release you for your lunch
9 break. I'll ask you to come back at 1:15. While you are away
10 at lunch, do not discuss the case with anyone and do not allow
11 anyone to discuss the case with you. It is at the point now
12 where you can begin deliberation, but it's very important that
13 each of you hear what everyone else has to say about the
14 deliberation. When you come back, just go directly to the
15 deliberation room.

16 Mr. Birch, Ms. Cook, Ms. Pfeiffer, Mr. Holloway,
17 Ms. Hayes, and Mr. Barry, as you know, you were the last six
18 jurors that we seated. You also were aware that you were
19 separated somewhat from the first 12. We're at the point now
20 where only the first 12 can be involved in the deliberations.
21 But we still need you here. Ms. Palmer is going to find
22 somewhere in the courthouse to place you where you will not be
23 exposed to any outside influence. Once you come back,
24 Ms. Palmer will take you to that location. You can go ahead
25 and have lunch. If you'd like to have lunch with some of the

1 first 12, feel free to do so. Again, while you are at lunch,
2 do not look at anything that might touch upon this case at all
3 and do not listen to anything that might touch upon this case
4 at all.

5 Ms. Palmer.

6 (Luncheon recess.)

7 (Recess for deliberation.)

8 THE COURT: Please be seated.

9 The Court has received a communication from the
10 jury. The communication reads as follows: "We need to ask
11 the Judge to clarify third part of Count 2, fourth element.
12 Is the or correct? Either killing during kidnapping or
13 willful, deliberate, malicious, and premeditated? Or both?"

14 This was addressed in the Court's instructions, and
15 I would propose that the Court respond directly to the
16 question with the following language: "The or in the language
17 is correct. It is only necessary for the government to prove
18 beyond a reasonable doubt either, quote, 'killing during
19 kidnapping' -- and that's lifted from the jury's question; I'm
20 using their language instead of the precise language in the
21 instruction, "or, quote, 'willful, deliberate, malicious, and
22 premeditated.' However, you must be unanimous as to which of
23 the two alternatives; that is, you must all agree that the
24 government has proved the killing was committed during
25 kidnapping or you must all agree it was willful, deliberate,

1 malicious, and premeditated."

2 Mr. Neff, does the government have any objection or
3 any comments on the Court's proposed response?

4 MR. NEFF: No, Your Honor. It appears that answers
5 the question directly.

6 THE COURT: Ms. Cory, does the defense have any
7 objection to the Court's proposed instruction?

8 MS. CORY: Your Honor, we do have an objection,
9 because the charge in the indictment—this is, of course, what
10 the jury is looking at—specifies, and it's the kidnapping and
11 premeditation. They're trying to decide how to interpret that.
12 Your Honor's instructions cover that exactly. We do not
13 believe there is any need to give them additional instructions.
14 The jury charge takes care of it.

15 THE COURT: I think that is correct. But what
16 they're asking about, I think, was the charge. So if they were
17 completely clear on that, I don't know that they would have
18 asked a question. And I would like to respond directly to what
19 they have asked. The instruction tells them that it is
20 either/or, there is no requirement of both, and I believe that
21 that is the current -- well, it's not current, it goes on quite
22 a while, I believe, that -- at least in the Sixth Circuit, that
23 when you instruct on alternatives, that the government must
24 charge in the conjunctive but the Court must instruct in the
25 disjunctive, which is what we've done.

1 MS. CORY: That's correct, Your Honor. You've done
2 that already. And our request would be that you simply
3 instruct the jury to look over the instructions you've already
4 provided.

5 THE COURT: Is there anything legally incorrect about
6 what the Court's proposed language states?

7 MS. CORY: No, Your Honor. I just don't think it's
8 necessary.

9 THE COURT: Well, since the jury did make the
10 request, obviously they felt they needed some clarification.
11 And since neither side indicates that the proposed language is
12 legally incorrect, the Court, then, will sign the communication
13 and have Ms. Palmer return the communication to the jury.

14 Ms. Palmer.

15 MR. WILLIAM ORTWEIN: Could I --

16 THE COURT: Yes, Mr. Ortwein?

17 MR. WILLIAM ORTWEIN: Go ahead. Nothing about that.
18 I just want to make an inquiry about, for example, two things;
19 one, how long the Court intends to let the jury deliberate
20 today, and if -- when the Court -- assuming they don't reach a
21 verdict, and assuming that the Court decides to send the jurors
22 home overnight, does Your Honor bring them back into the
23 courtroom to do that, or --

24 THE COURT: Yes. Yes.

25 MR. WILLIAM ORTWEIN: Okay.

1 THE COURT: Before they are released, they have to be
2 brought back into the courtroom. We have a running joke in the
3 courthouse. One of the deputy clerks who was not used to being
4 in court sent the jury away without them being in court. And
5 some of the other judicial officers started referring to her as
6 Judge So-and-So.

7 MR. WILLIAM ORTWEIN: Well, I've seen it done both
8 ways, Judge. I was just curious how Your Honor was going to
9 proceed.

10 THE COURT: We will always have them brought back
11 into the courtroom before they are released.

12 MR. WILLIAM ORTWEIN: Does Your Honor have any idea,
13 assuming they don't reach a verdict, how long you'll --

14 THE COURT: Not much after 5:00.

15 MR. WILLIAM ORTWEIN: 5:00?

16 THE COURT: It's very stressful to be involved in
17 deliberations, and they don't need to go much past 5:00.

18 MR. WILLIAM ORTWEIN: I tend to agree with the Court.
19 I was just curious, I guess you could say.

20 THE COURT: Ms. Palmer.

21 (Recess for deliberation.)

22 (The jury entered the courtroom, and the proceedings
23 continued as follows:)

24 THE COURT: Please be seated.

25 The Court has received a communication from the

1 jury. The communication reads as follows: "We have a
2 verdict."

3 [Name omitted], you're the foreperson of this jury?

4 THE FOREPERSON: Yes, sir.

5 THE COURT: And has the jury reached a unanimous
6 decision in this case?

7 THE FOREPERSON: Yes, sir.

8 THE COURT: If you would, please give the verdict
9 form to Ms. Palmer.

10 (Brief pause.)

11 THE COURT: [Name omitted], I see that in
12 Question 2.A and 4.A there is a typographical error. There are
13 actually two word was in it, and I think the second one does
14 not belong. So could I get you to cross the second one out and
15 put your initials beside it?

16 THE FOREPERSON: Yes, sir.

17 (Brief pause.)

18 THE COURT: Do you see what I was referring to? And
19 it's on the next -- first page, also. I think it's 4.A. Is
20 that right? Or 2.A?

21 (Brief pause.)

22 THE COURT: Mr. Taylor, would you and your attorneys
23 please stand and face the jury.

24 Ms. Palmer, would you please announce the jury's
25 decision.

1 THE CLERK: "Number 1. We, the jury, unanimously
2 find defendant is guilty of the offense charged in Count 1 of
3 the indictment, carjacking resulting in death.

4 "Number 2. We, the jury, unanimously find defendant
5 is guilty of the offense charged in Count 2 of the indictment,
6 first-degree murder by use of a firearm during and in relation
7 to carjacking.

8 "2.A. We, the jury, unanimously find the murder in
9 Count 2 of the indictment was committed during the
10 perpetration of a kidnapping.

11 "Number 3. We, the jury, unanimously find defendant
12 is guilty of the offense charged in Count 3 of the indictment,
13 kidnapping resulting in death.

14 "Number 4. We, the jury, unanimously find defendant
15 is guilty of the offense charged in Count 4 of the indictment,
16 murder by use of a firearm during and in relation to
17 kidnapping.

18 "4.A. We, the jury, unanimously find the murder in
19 Count 4 of the indictment was committed during the
20 perpetration of a kidnapping."

21 THE COURT: You may be seated.

22 Mr. Neff, does the government desire to have the
23 jury polled?

24 MR. NEFF: No, thank you, Your Honor.

25 THE COURT: Mr. Ortwein, does the defense desire to

1 have the jury polled?

2 MR. WILLIAM ORTWEIN: Yes, Your Honor.

3 THE COURT: Ladies and gentlemen, you have just heard
4 that the defense has asked that you be polled. I will ask
5 Ms. Palmer to inquire of you individually whether the verdict
6 that she just announced is your own personal verdict. If what
7 she announced is not your personal verdict, then say no. If
8 what she announced is your personal verdict, then please say
9 yes.

10 Ms. Palmer, please poll the jury.

11 THE CLERK: Juror 158, [name omitted], is the verdict
12 I have read your verdict?

13 JUROR 158: Yes.

14 THE CLERK: Juror 116, [name omitted], is the verdict
15 I have read your verdict?

16 JUROR 116: Yes.

17 THE CLERK: Juror 144, [name omitted], is the verdict
18 I have read your verdict?

19 JUROR 144: Yes, ma'am.

20 THE CLERK: Juror 228, [name omitted], is the verdict
21 I have read your verdict?

22 JUROR 228: Yes, ma'am.

23 THE CLERK: Juror 115, [name omitted], is the verdict
24 I have read your verdict?

25 JUROR 115: Yes.

1 THE CLERK: Juror 132, [name omitted], is the verdict
2 I have read your verdict?

3 JUROR 132: Yes.

4 THE CLERK: Juror 148, [name omitted], is the verdict
5 I have read your verdict?

6 JUROR 148: Yes.

7 THE CLERK: Juror 138, [name omitted], is the verdict
8 I have read your verdict?

9 JUROR 138: Yes.

10 THE CLERK: Juror 256, [name omitted], is the verdict
11 I have read your verdict?

12 JUROR 256: Yes.

13 THE CLERK: Juror 122, [name omitted], is the verdict
14 I have read your verdict?

15 JUROR 122: Yes.

16 THE CLERK: Juror 114, [name omitted], is the verdict
17 I have read your verdict?

18 JUROR 114: Yes.

19 THE CLERK: And, Juror 160, [name omitted], is the
20 verdict I have read your verdict?

21 JUROR 160: Yes.

22 THE COURT: The Court will direct the courtroom
23 deputy to file and record the verdict.

24 Ladies and gentlemen, this will conclude your
25 service on this phase of the case. I'm going to ask that you

1 retire to the jury deliberation room at this point for further
2 instructions. So the jury should leave the courtroom.

3 (The jury exited the courtroom, and the proceedings
4 continued as follows:)

5 THE COURT: Be seated.

6 In light of the jury's decision, we need to decide
7 when we would like to commence the next phase of the case.
8 The parties had asked for some time off. I think that we're
9 ahead of schedule. And it is possible for the Court actually
10 to commence the second phase on Wednesday the 10th of this
11 month. The 11th and 12th would not be feasible. And then we
12 would resume on the 15th -- I'm sorry, the 16th.

13 MR. WILLIAM ORTWEIN: Your Honor, I was just going to
14 say I thought you said the other day for some reason we weren't
15 going to hold court the 15th.

16 THE COURT: You're correct. The 15th is wrong.
17 Ms. Palmer just reminded me of that, that one of the jurors is
18 going to be out of town and not available on the 15th.

19 MR. WILLIAM ORTWEIN: Start the 16th?

20 THE COURT: The 16th.

21 MR. NEFF: Your Honor, if it's possible, we'd like to
22 start on the 16th rather than going one day and taking five
23 days off and coming back. If we could start on Tuesday the
24 16th and roll through it, that would be our preference.

25 (Off-the-record discussion.)

1 THE COURT: I don't know how much time we're looking
2 at, but, again, on the 18th and 19th we will not have full
3 days. We may be able to get in a half day on that Thursday the
4 18th, but the 19th is out and the afternoon of the 18th is out.
5 And looks like we'll have it three days the following week,
6 Monday, Tuesday, and Wednesday. So I think there is going to
7 be a break anyway, unless you're looking at completing
8 everything in two or three days.

9 MR. NEFF: Well, Your Honor, we can -- we can
10 probably conclude our case in two to two and a half days on
11 sentencing, ourselves. And that might be a natural breaking
12 point. If we start on Tuesday, we'll finish by the end of the
13 week.

14 THE COURT: Well, okay. Again, if we start on the
15 16th, that's a Tuesday, we'll have that day, some of that
16 Wednesday, and perhaps a half day on Thursday. So we're
17 looking at, at most, two days that week.

18 MR. NEFF: I think that's enough for us, Judge, for
19 our case. I would rather do it that way than do one day on
20 Wednesday and wait a week and put on another day, if that's
21 possible. Obviously we'll do whatever the Court wishes.

22 THE COURT: And the following week we'll have three,
23 perhaps three and a half days.

24 MR. NEFF: Yes, sir.

25 MR. WILLIAM ORTWEIN: Whatever Your Honor says is

1 fine. Of course we just didn't know about the scheduling,
2 scheduling witnesses. I will tell the Court I expect the
3 defense proof to last approximately a week and a half. That's
4 just an expectation. I obviously don't know how many questions
5 counsel for the government will ask.

6 THE COURT: I'll have Ms. Palmer, then, instruct the
7 jury that they should return on Tuesday the 16th.

8 MR. POOLE: Thank you.

9 MR. NEFF: Thank you, Your Honor.

10 THE COURT: That's a week from tomorrow.

11 MR. NEFF: Yes, sir.

12 THE COURT: Okay. And in view of the hour, I'll not
13 have them brought back into court, but I will just have
14 Ms. Palmer instruct them that they should return on that date.

15 MR. NEFF: Thank you, Your Honor.

16 MR. WILLIAM ORTWEIN: Thank you.

17 THE COURT: Is there anything else we need to do?

18 (Off-the-record discussion.)

19 MR. WILLIAM ORTWEIN: Your Honor, that's fine.

20 THE COURT: Is there anything further?

21 MR. NEFF: No, thank you, Your Honor.

22 MR. POOLE: No, Your Honor.

23 THE COURT: Ms. Palmer.

24 (Evening recess.)
25